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ENSION OF GOVERNMENT GUARANTY TO CARRIERS BY WATER

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HEARINGS

BEFORE THE

ITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS
FIRST SESSION

P105-41

ON

H. R. 7100

JULY 11, 1921

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1921

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

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EXTENSION OF GOVERNMENT GUARANTY TO CARRIERS BY WATER.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Monday, July 11, 1921.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. Gentlemen of the committee and others present, we will begin hearings on bill H. R. 7100 and I will ask Commissioner Clark of the Interstate Commerce Commission, to appear now, if he chooses to do so.

STATEMENT OF MR. EDGAR E. CLARK, CHAIRMAN INTERSTATE COMMERCE COMMISSION.

Mr. CLARK. Mr. Chairman, this measure seems to be identical, in purpose at least, with H. R. 5963, in the third session of the Sixty-sixth Congress, on which hearings were held by this committee, and at which I appeared on February 24, 1921. The statement or testimony that I gave at that time is to be found on page 5 and succeeding pages of the printed report of that hearing. If it is desired, I will summarize that statement, or I can refer to it and say that I have no different views now from those expressed at that time.

The CHAIRMAN. Would it be agreeable to you to submit your letter as the expression of your views on this subject?

Mr. CLARK. Yes. You refer to the letter in response to your request for a report on the bill?

The CHAIRMAN. Yes.

Mr. CLARK. Yes; I will submit that as an expression of my views.

The CHAIRMAN. Will you read that letter, Mr. Clark, and make such comments on it as you desire? Then, if the committee does not care to detain Mr. Clark any longer, we can excuse him.

Mr. CLARK. This letter is dated June 17, 1921, and is addressed to Chairman Winslow, as follows:

In your communication of the 15th instant, you submitted copy of bill H. R. 7100, and called attention to the similarity between this bill and H. R. 6313, on which you received report from me on June 3.

My letter of June 3, with reference to H. R. 6313, expresses the views of the commission also with regard to H. R. 7100. The purposes of the measures are the same. The only distinction between them is that in H. R. 7100 some few minor corrections have been made and section 2 has been added, providing that the passage of this amendatory act shall not affect any rights or benefits conferred by the original subdivision (a) of section 209, nor be construed to exclude any beneficiary embraced within the terms of the original act. This proviso certainly is not objectionable. It is advisable as a matter of precaution.

Now, as of course everyone recognizes, the purpose of this measure is to permit carriers that were not under railroad ownership or control, and that were taken under Federal control and were under Federal control at the time that control terminated, to have the benefits, whatever they may be, of the guaranty under section 209 of the transportation act. The original measure on which hearings were had before was, as the report of the hearings will disclose, intended primarily to benefit, or to make eligible to those benefits, the Merchants & Miners Transportation Co. It was believed that there was no other water carrier in the same situation that that carrier was in, and I pointed out at that time that the bill would only make that carrier eligible to the guaranty and that it was impossible to estimate what the guaranty under section 209 for the guaranty period would be until the question of the standard return of the carrier for the period of Federal control had been determined. This and a few other water carriers were taken over by the President under a second proclamation issued on April 11, 1918. The director general in a somewhat summary fashion attempted to surrender control of this carrier some time before Federal control terminated. The correspondence between the director general and the Merchants & Miners Transportation Co. relative to that passed, in the main, during March, 1919. The company finally took back its properties, under an agreement between the director general and the company that it would in no wise prejudice the position of either the administration of the transportation company with regard to the question of compensation. Later on we were asked to appoint a board of referees to determine the question of the compensation of this carrier for the period of Federal control. Such a board was appointed, and it made its report on October 4, 1920. There developed in that proceeding, as there has developed in the negotiations between the director general and the company, a controversy as to whether or not the transportation company was under Federal control when Federal control terminated. The referees found that it was, and made a finding as to the amount of compensation to which it was entitled. I understand that at the time, and, so far as I know, at the present time, that decision of the referees has not been accepted, although I do not state that positively as of the present time, because they may have compromised their differences without the fact coming to my knowledge.

Mr. SANDERS. It has not been accepted, as I understand.

Mr. CLARK. That is my understanding, and that leaves the question where it was before. If this bill should become a law, so far as that company is concerned, it will be eligible to claim the guaranty under section 209, but no certificate can be made for it until the standard return for the Federal-control period has been determined, because the guaranty is based squarely upon the standard return. At the time of my former appearance here I presented and the committee ordered printed a copy of the finding of the board of referees, and that appears beginning on page 17 of the report of the former hearing. At that hearing I was asked by a member of the committee a question, which concluded in this way:

> It is but simple justice to treat all persons who suffered a loss alike. Why should not Congress do that? We have the power. There is no question about that. It is not unconstitutional. It is not unconstitutional to do justice. Why not do justice to the water lines as well as to the rail lines?

I answered:

If you want my opinion, I think in morals and in equity that you should.

I have not changed that view. I understand that there have been some suggestions about amendments to this bill so as to include other water carriers or other classes of water carriers in addition to those covered by the provisions of the bill as it appears. I had some correspondence on that subject with representatives of the Chesapeake Steamship Co.—I think that is the technical name of the carrier—and some with members of the committee. With regard to that company, I simply pointed out that it is owned jointly by the Southern Railway Co. and the Atlantic Coast Line Railroad Co., the former owning two-thirds and the latter one-third of the capital stock. The Atlantic Coast Line Railroad Co. accepted the provisions of section 209, and comes within the guaranty. The Southern Railway Co. did not accept the provisions of section 209, and, therefore, had no guaranty. The Merchants & Miners' Transportation Co. did accept the provisions of section 209 within the time limit fixed by the transportation act. At the former hearing I was asked as to the reasons for that action on the part of that company, and I said in substance that my guess was that it was out of an abundance of caution. I have no more knowledge now as to the reason for that action than I had at that time, but it seems to me to be a proper precaution for the company to take in view of the controversy that it had with the director general as to whether or not the steamship line was under Federal control when Federal control terminated.

Mr. BARKLEY. Would you say that companies that, under the law, were not included in the guaranty could be estopped from filing claims under the guaranty if this bill were passed, by the fact that they had not accepted it? If they were not included they would not be required to accept.

Mr. CLARK. This bill proposes to modify one of the paragraphs of section 209 by including therein any carrier by water not controlled by any railroad company, but it, like all other carriers, would be subject to the provisions of another part of section 209 that the provisions of that section shall not apply to any carrier that does not accept the terms of that section.

Mr. BARKLEY. Is that quite fair to those who did not accept because they were not included, or if we pass a retroactive law to include them, ought they to be given a reasonable time within which to file their acceptance under this law? Should we presume that they would accept something that did not apply to them at the time the law was enacted? If this bill were to become a law, should it not apply to all of them, or to all who would come in, giving them a chance to file acceptances, whether they did so originally or not?

Mr. CLARK. That question, I think, hinges entirely upon the view of justice and liberality to the carriers that the committee or Congress might take. The carrier that accepted the provisions of section 209 agreed with the Government that its net operating income for the six months' guaranty period should not be less than its standard return for the corresponding six months' period during the test period, but that if the carrier during the six months' guaranty period earned a larger income than that, the excess above that amount reverted to the Government. It was not entirely one-sided.

Mr. BARKLEY. Suppose there are two steamship companies that are in exactly the same situation; we will suppose that the Merchants & Miners' Transportation Co. is one and that some other steamship company, or the Chesapeake Steamship Co., is the other, and that the law did not apply to either of them, so far as the guaranty is concerned. Now, we will assume that the Chesapeake Steamship Co. desired to file its acceptance of the guaranty, but, upon looking into that law, saw that it did not apply to it and that it was no use for it to file an acceptance; but suppose the Merchants & Miners' Transportation Co., taking time by the forelock, did file its acceptance, as a matter of equity ought the other company to be barred because it did not file its acceptance under a law that did not apply to it, while the mere filing of the acceptance by a company to which the law did not apply would result in the guaranty provided under this law?

Mr. CLARK. I suppose there is room for argument on both sides of that question.

Mr. DENISON. It seems to me that we would have to go into the question of the motives that were back of the failure to file the acceptance. It seems to me that Congress would have to go into an analysis of the motive.

Mr. BARKLEY. Will it go into the motive of the one that did file?

Mr. DENISON. No; in that case——

Mr. BARKLEY (interposing). Where the law did not require either being filed?

Mr. MERRITT. There is the question, also, of whether the filing of the notice had any effect of any sort.

Mr. CLARK. It has had no effect up to the present time.

Mr. BARKLEY. Under the law it could not have any.

Mr. CLARK. Section 209 says that this provision shall not apply to any carrier that does not, before the expiration of a specified date, file its acceptance of all the terms of that section.

Mr. BARKLEY. That was only intended to apply to companies that the law gave the guaranty to, but it did not give it to the Merchants & Miners Transportation Co. or any of those other steamship companies that were not operated in connection with railroad companies, and so it seems to me that as a matter of justice and equity they should all stand on the same basis, whether they filed acceptances or not. If this is made retroactive to apply to one of them, the mere fact that it has filed an acceptance should not give it an advantage over those that did not file acceptances, because the law did not require them to do so, and could not compel them to do so. The fact that they did not, should not operate against them.

Mr. CLARK. I think that technically, if this bill should become a law as it stands now, the fact that the Merchants & Miners Transportation Co. did file an acceptance would entitle it to claim and have consideration of its claim for guaranty, while if there were another steamship company in exactly the same circumstances, except that it did not file an acceptance, it would be outside.

Mr. SANDERS. As a matter of fact, under the terms of the bill, that question is more or less academic, for under the terms of the bill there is only one carrier, or only one water carrier, which was under Federal control at the termination of Federal control which was not controlled by a railroad company. Is not that true?

Mr. CLARK. As I understand it, that is true, but I am still in the position I was in at the former hearing, I am not willing to assert that as a fact, because even as to this company the question of whether or not it was under Federal control when Federal control terminated is a controverted question which may require judicial determination. As I pointed out, we have had a great deal of difficulty in determining as to the various carriers whether they were ever under Federal control, or whether they were under Federal control when it terminated. For that reason I am not willing to say with positiveness that a carrier was or was not under Federal control until the matter has been fully investigated and determined. The board of referees believed that the carrier was under Federal control at the termination of that period.

Mr. SANDERS. Of course, if it should be judicially determined that the Merchants & Miners Transportation Co. were not under Federal control at the termination of Federal control, this act would confer no benefits.

Mr. CLARK. None whatever. They would have no claim either under any of the provisions of section 209 or under this bill.

Mr. LEA. If the report of the board of referees should be approved, would there be any necessity for this legislation?

Mr. CLARK. There would be, because the report of the Board of Referees covers only the Federal control period, and this covers the guaranty period of six months succeeding the surrendering of the properties to their owners. As I have said before, the guaranty is measured by the standard return for a corresponding period during the test period, and, therefore, you can not determine the guaranty of any carrier until the standard return has been determined, and the standard return is what is in controversy under the findings of the referees.

Mr. HUDDLESTON. May I ask under what authority the referees were appointed?

Mr. CLARK. Under the authority of section 3 of the Federal control act.

Mr. HUDDLESTON. Do I understand that an appeal, or other proceeding, questioning the rightfulness of the referees' decision is being prosecuted?

Mr. CLARK. I can not say that it is being prosecuted. The carrier affected by such a decision has the right to accept it or to decline it and appeal to the Court of Claims. The President has the right to accept the finding of the referees or decline to accept it, and that, in turn, forces the carrier to sue in the Court of Claims.

Mr. HUDDLESTON. Has the President acted in that respect?

Mr. CLARK. I understand that the carrier has not been willing to accept the decision of the Board of Referees.

Mr. HUDDLESTON. The carrier has not been willing?

Mr. CLARK. That is my understanding.

Mr. HUDDLESTON. I was under the impression that the referees had decided in favor of the carrier.

Mr. CLARK. Well, that is a question. Mr. Kent corrects me. He says that the carrier desired to accept it, but the President declined.

Mr. HUDDLESTON. So long as the President will not accept, the carrier has no recourse except to sue in the Court of Claims.

Mr. SANDERS. As I understand it, the matter is not now in the Court of Claims, but is hanging fire pending negotiations between the President and the company.

Mr. HUDDLESTON. As a matter of law, the matter stands just as though no finding of the referees had been made at all?

Mr. CLARK. Except that if suit is brought in the Court of Claims the findings of the referees will be prima facie evidence.

Mr. HUDDLESTON. If the Court of Claims should find that the carrier was not, as a matter of fact, under Federal control upon the relinquishment of control in March, 1920, this bill would be useless and would have no effect?

Mr. CLARK. It would be useless and the findings of the referees would be of no effect.

Mr. HUDDLESTON. Would you consider it advisable to have the decision of the court on that point before Congress takes any action?

Mr. CLARK. I would not think that that was especially desirable. There is a possibility that the director general and the claimant may get together and agree upon a settlement for the Federal control period, in which event if this bill were the law the claim would be brought forward.

Mr. HUDDLESTON. The passage of this bill would be to anticipate that the director general would agree with the carrier or that the carrier would be successful in the suit, one or the other?

Mr. CLARK. Yes, sir.

Mr. HUDDLESTON. Can you give us some information as to the amount involved in the matter, so far as the Merchants & Miners' Co. is concerned?

The CHAIRMAN. As I understand, the representative of the Merchants & Miners' Co. has that information.

Mr. CLARK. In my former testimony I showed that the Merchants & Miners' Co. filed a claim with the board of referees for compensation, based on income amounting to $826,380.68, for depreciation, $298,049.35 for operating losses, less depreciation, $84,569.73, a total of $1,219,828.10. The company's water line operating income, which corresponds to railway operating income, for the three years included in the test period was, for 1915, $618,027.59; for 1916, $1,074,744.65, and for 1917, $303,797.46. In round numbers that would aggregate for the three years included in the test period slightly over $2,000,000, and that would be divided by three to get the annual, which would make it somewhere about $700,000.

Then for the guaranty period in round numbers and roughly approximated it would be one-half of that, and assuming that those claims are sustained the average of the three years would be $665,523.24, but those figures and any computations based upon them are necessarily complicated by the fact that during the test period this company operated 23 or 24 boats, but at the time they were taken over by the Government under Federal control they had only 14 in operation, and only 14 were taken over, so that there must be an adjustment between the earnings during Federal control of the 14 boats as compared with the earnings of the 23 boats during the test period.

Mr. HUDDLESTON. As a result of those calculations can you give us roughly an idea of what is involved to this company in the six months' guaranty?

Mr. CLARK. I think the most accurate estimate which can be made of that would be the findings of the referees. On the question of the first claim based on income, which was $826,380.68, the board found that the carrier was entitled to 65.971 per cent of that, or $439,052 per year, and pro rata for fractional parts of a year. The claim for depreciation amounted to $298,049.35.

Mr. BARKLEY. The question of depreciation would not enter into the question of guaranty?

Mr. CLARK. No; that claim was disallowed anyhow. The third claim for operating losses was disallowed. So it can be suggesed with approximate accuracy that the board found the annual income to which the carrier was entitled was $439,052 for each year and pro rata for fractional parts of the year.

Mr. HUDDLESTON. The guaranty would be one-half of that?

Mr. CLARK. The guaranty for six months on that basis would be about $250,000.

Mr. HUDDLESTON. That is the amount involved?

Mr. CLARK. Roughly.

Mr. HUDDLESTON. Can you give us some idea as to the amount involved in the Chesapeake Steamship Co. claim?

Mr. CLARK. I know nothing about it. There has been no referee appointed in that case, no investigations, and no findings. As I have said, the company was owned two-thirds by the Southern Railway, and the Southern Railway did not accept the provisions of section 209, made no claim for the guaranty, and no attempt has been made to figure it, either for the test period, the Federal control period, or the guaranty period with regard to the Chesapeake Steamship Co.

Mr. HUDDLESTON. That company was held to be under the control of a railroad?

Mr. CLARK. There is no doubt of that. It is under the ownership of two railroad companies, one of which, owning one-third of the stock, did accept the guaranty, and the other of which, owning two-thirds of the stock, did not accept it.

Mr. HUDDLESTON. What would be your view as to the significance of that action? Does it seem that the company itself accepted the guaranty or refused it?

Mr. CLARK. It did accept it, as I recall. That is, it filed with us an acceptance of it.

Mr. HUDDLESTON. It attempted to accept it?

Mr. CLARK. That is my recollection.

Mr. HUDDLESTON. The thought I had was whether a finding of joint ownership by the two railroad companies would preclude that company from participating in the guaranty?

Mr. CLARK. I think it is precluded without additional legislation to include it.

Mr. HUDDLESTON. The fact that a majority of the ownership was in a railroad company which did not accept the guaranty precludes the subsidiary from the benefits of the guaranty?

Mr. CLARK. As to my understanding of the proposition; yes.

Mr. HUDDLESTON. Although the minority ownership did accept the guaranty and the concern itself attempted to accept it?

Mr. CLARK. Where railroad-owned or controlled boat lines were taken under Federal control and certificates had been made as to the

amount due under the Federal control period or under the guaranty period, I think that in every instance the operations of the boat lines have been included with the owning or controlling railroad company and separate settlements have not been made for the boat lines. Whether or not the Atlantic Coast Line included its share of the Chesapeake Steamship Co. in its claim, I am not advised at the moment.

Mr. HUDDLESTON. Is there a copy of the report of the referees in the hearings?

Mr. CLARK. Yes, sir.

Mr. HUDDLESTON. Does it recite the facts and discuss the merits of the controversy as to whether this carrier was in Federal control?

Mr. CLARK. Quite fully.

Mr. HUDDLELSTON. I did not know whether it included a statement of the facts or was merely a decision?

Mr. CLARK. It recites all the pertinent facts.

Mr. GRAHAM. I understand that the referees were appointed in this particular case under the provisions of the transportation act of 1920?

Mr. CLARK. Yes, sir.

Mr. GRAHAM. Some legal question has been raised as to whether that was properly done?

Mr. CLARK. If the carrier was not under Federal control, and some contention is made that it was not, of course, the findings of the referees will be invalid.

Mr. GRAHAM. Do you know how long the President has had this report?

Mr. CLARK. It was issued in October, 1920, and served on the parties at that time.

Mr. GRAHAM. I suppose the parties have presented briefs to the President in support of their contention?

Mr. CLARK. I can not speak authoritatively as to any negotiations since the report of the referees was served.

Mr. GRAHAM. Do you know whether the President, in his consideration of the matter, is taking into account the possibility of his having no legal jurisdiction over the subject matter?

Mr. CLARK. I am not advised as to just what points their differences now hinge upon.

Mr. GRAHAM. It occurred to me that if the President was going to decide the matter ultimately and by his decision the company might possibly get the guaranty, this legislation might be unnecessary, but if it should go off on the question of jurisdiction, then legislation would be necessary.

Mr. CLARK. I think if the President should reach a settlement with this company; or, illustratively, if the President should accept the award of the referees, that would entitle this company to payment for the Federal control period of the amount found and awarded, but it would not give it any rights under section 209 of the Transportation Act.

Mr. GRAHAM. The rights that are involved in the claim already filed.

Mr. CLARK. Because under section 209 the class of carriers entitled to the guaranty was specified and this is of a class not specified.

Mr. GRAHAM. Are there any other rights or privileges which it is now seeking to assert? Would it receive subsequent benefits other and aside from the amount of money?

Mr. CLARK. I can not see that the passage of the bill would confer anything except the right to claim the guaranty. The amount of the guaranty would depend upon the amount of its standard return for the Federal control period. If the President should accept the findings of the referees, then the basis for the amount of its guaranty would be fixed. There would be nothing involved except the Government would give it that amount of money for the guaranty during the six months following the period of Federal control during which this company operated at a very substantial deficit.

Mr. GRAHAM. If the President should accept the report of the referees and agree with the company on the amount fixed, and come to a final settlement, would there be any way that the matter could be questioned?

Mr. CLARK. I do not think so if they reach an agreement and have a final binding settlement, which, I am informed, is approved by the board of directors of the carriers.

Mr. GRAHAM. If this bill is passed would this company receive benefits to which it was not entitled under the existing law and when other companies or concerns in a similar condition would not receive as much consideration?

Mr. CLARK. No; I know of no other company situated just as this one is. The Chesapeake Steamship Co. seems to me to stand in the same position, except for the fact that its stock is owned by the two railroad companies I have named, while in the case of the Merchants & Miners' Co. there is no railroad control or ownership; it is an independent water carrier, so far as ownership is concerned.

Mr. GRAHAM. Of course, irrespective of whether they filed an acceptance or whether they did not, if their property was in fact used by the Government and they were caused to suffer certain losses, so far as the justice of the case is concerned, it would seem that one might be as properly entitled to relief as the other?

Mr. CLARK. Yes, sir; except as to the weight that should be given to the fact that the one made the agreement before the results of the guaranty period were known, it took some chance of good times and lots of business and returning some earnings to the Government.

Mr. GRAHAM. In other words, you are rather of the opinion that these companies having the right of option, after they exercised their option, perhaps, should be held to it?

Mr. CLARK. Yes. It seems to me that the Government made a fair offer to the carriers that had been under Federal control. It said, "We will guaranty you for these six months your return which must be no less than for the correspoding six months of the test period," which in substance meant that we will extend the compensation an additional six months if you agree with us that if you earn more than that you will turn it back to the Government. It was well known here in Congress and by everybody else that it was essential that there should be substantially a higher level of rates put into effect in order to avoid deficits that had been piling up under Federal control. Nobody knew what the Government would do, or what the result would be, how soon business would begin to fall off after

the termination of the war and after Federal control. Practically all of the carriers that had been under Federal control accepted the provisions of the act. One, the Southern Railway, did not and it happened to be the owner of two-thirds of the capital stock of the Chesapeake Steamship Co.

Mr. GRAHAM. Have you any reason to believe that the Merchants & Miners' Co. thought at the time that they filed their acceptance that they came under the law?

Mr. CLARK. I had no advice as to what they believed or just what they had in mind. I assume that they were clinging to the contention they had made all the time, that they were under Federal control when Federal control terminated. They filed the acceptance as an extra precaution and to put themselves in a position so they could not be accused of neglect in looking after their own interests and doing everything in their power to protect their interests.

Mr. GRAHAM. How long was it before the expiration of the period of Government control that the director general relinquished Government control over this company?

Mr. CLARK. The Railroad Administration apparently attempted to relinquish control of this carrier in December, 1918, when the director general first issued his notice of relinquishment.

Mr. GRAHAM. And the President proclaimed that the period of Government control ceased?

Mr. CLARK. Oh, no. The period of Government control did not cease until March, 1920. This carrier was taken over by a second proclamation of the President, issued in April, 1918, the great majority of the carriers having been taken over as of January 1, 1918. Then, in December, 1918, the director general issued his order relinquishing this and some other water carriers. This carrier refused to accept it as a legal relinquishment. Negotiations were carried on until the latter part of March, 1919, when they reached an agreement that the company would take the property and operate it, but that neither the company nor the Government relinquished any rights by that change in operation.

Mr. GRAHAM. From December, 1918, until the period of Government control expired in March, 1920, this company was operated and its property conducted by its own officers?

Mr. CLARK. I think there is room for a good deal of difference of opinion as to whether it operated from December until the latter part of March.

Mr. GRAHAM. March, 1919?

Mr. CLARK. Yes, sir. The director general operated the line under substantially the same officers, not all of them, but the officers he did retain were men who had been in the employ of the company. There is a period of controversy between December, 1918, and the latter part of March, 1919, when they were negotiating. There was no relinquishment until the latter part of March, when they reached an agreement that the company would take the properties and operate them, but neither the company nor the Government would thereby prejudice any of their rights.

Mr. GRAHAM. Then there was approximately a year of private operation?

Mr. CLARK. Yes, sir.

Mr. GRAHAM. While the director general was in charge of the actual operations of the company, yet from December to March, 1919, did the officials operate under his orders or under the orders of the owners of the company?

Mr. CLARK. I do not believe that I can safely answer that question categorically. On February 13, 1919, the general counsel of the Railroad Administration said in a letter to the president of the Merchants & Miners' Transportation Co.:

> I take it that regardless of the legal question as to whether the director general had the power to relinquish the boats, you must recognize that it is your duty to so act in the premises as to minimize the loss to the utmost extent.

They were at odds as to whether or not they were under Federal control.

Mr. GRAHAM. Perhaps, Mr. Commissioner, you can tell us upon what line of argument did the company contend that it was not being properly relinquished by the director general?

Mr. CLARK. I think I would rather let Mr. Kent tell you about that, Mr. Graham, because he is the legal adviser of that company. Those contentions were not made before us—there had been negotiations and contentions carried on entirely independent of any connection with us, and I am not familiar enough with them to attempt to testify as to them.

Mr. GRAHAM. That is all.

Mr. HOCH. The argument is made that this company, though not under the law as to the guaranty, is entitled to more consideration than it would have been if it had not filed an acceptance, because by filing the acceptance it took chances of loss by virtue of earning more than the standard return. Now, if this company, as a matter of fact had earned during that period more than the standard return, would the Government be in a position to enforce anything by virtue of the acceptance under a law that did not apply?

Mr. CLARK. No, sir; the Government would not, in my judgment, have been able to assert any claim against the carrier, and I assume that if that result from operations had occurred, the Government would not now be attempting to amend the law so as to enforce a claim for the excess, whatever it might have been.

Mr. HOCH. Then, as a matter of fact, there was not much of a gamble involved in the acceptance, because if it went one way, the argument would be made that the acceptance should entitle to special consideration. If the results were otherwise, it would be held by the company that they should not be forced to lose anything by virtue of the acceptance.

Mr. CLARK. I do not think there was much gamble, so far as this company was concerned. The facts are these:

In March, 1919, in round figures, they had a deficit of $48,000, for April a deficit of $82,000, for May a deficit of $41,000, for June a deficit of $18,000, for July a deficit of $9,000, for August a net return of $41,000, for September a deficit of $10,000, for October a deficit of $13,000, for November a deficit of $10,000, and for December a deficit of $95,000. For January, 1920, the deficit was $88,000, and for February, 1920, there was a deficit of $170,000.

Mr. NEWTON. Possibly this has been brought out before, but I was not present: What I am interested in finding out is how it was that

this company was not included within the terms of the transportation act?

Mr. CLARK. You mean under the guaranty?

Mr. NEWTON. Yes, sir; under the guaranty.

Mr. CLARK. I could not attempt under the rules of evidence to prove it, but I think it was because nobody anticipated a situation of this kind.

The CHAIRMAN. I think I am as well qualified, probably, as anyone to answer that question, in view of my service on the committee during the consideration of the bill. As a matter of fact, neither during the work of the committee in its preparation of the bill nor in conference did anyone ever think of that. It was never brought up and nobody thought of it.

Mr. NEWTON. The question did not come up at all.

The CHAIRMAN. No; it did not. It was not brought up by anybody in any of the meetings.

Mr. HUDDLESTON. Did the Merchants & Miners Transportation Co. file a claim under the guaranty provision with the Interstate Commerce Commission?

Mr. CLARK. It has not.

Mr. HUDDLESTON. Has the question of whether or not they are within the terms of the guaranty been adjudicated by the commission or anyone else?

Mr. CLARK. It has not, because it has, I think, been accepted without dispute that the carrier is, for the reasons stated by the chairman and under the circumstances that surrounded and now surround it, not eligible under section 209 for the guaranty.

Mr. HUDDLESTON. That is generally agreed?

Mr. CLARK. I think that is agreed.

Mr. WEBSTER. Mr. Clark, assuming for the purposes of my question that this company was under Federal control at the time when Federal control terminated—because otherwise we agree there would be no right to come either under the act as it was originally passed or under this amendatory act—but, assuming that it was under Federal control, if the act of 1920 by its terms did not include this company, neither would it have included any number of companies similarly situated, so that the principle of this bill is sound or unsound, leaving out of mind altogether the number of companies involved in it.

Mr. CLARK. I think so. The bill would include any other companies that may discover that they are in the same circumstances.

Mr. WEBSTER. Now, as to the companies that were included in the transportation act, they were required within a certain specified time to file a notice as to whether they would take the benefit of the guaranty and agree to pay the Government the excess, if any, or would disclaim the guaranty and take their chances and retain what they earned during the guaranty period. Now, it seems to me quite plain that no legal right or liability can attach to a company merely because it filed an election under a law which did not apply to it. So that under the circumstances presented here we would have the Government making a return to this company of a definite amount of money, notwithstanding the fact that the Government never at any time had any chance to recapture the excess, if there had been any excess during the guaranty period. Is that the fact?

Mr. CLARK. Technically and legally, I think that is true.

Mr. WEBSTER. Then, is the principle of this bill sound? Does it not confer upon this company a benefit that no other company under the act ever had?

Mr. CLARK. Well, it does and does not. This company contended from the time, in December, 1918, when the director general attempted to relinquish it, that he was not proceeding in a lawful manner; that it was under Federal control, and it indicated its desire and willingness to accept the provisions of section 209; but it could have had no knowledge, except that which any carrier could have had, as to the result of the operations during the guaranty period.

Mr. WEBSTER. That is a moral consideration.

Mr. CLARK. Yes.

Mr. WEBSTER. As showing good faith on the part of the company; but the fact remains, nevertheless, that if that company had earned more during the guaranty period than the amount of the guaranty it could have retained that excess, and there would have been no power on the part of the Government to reclaim it.

Mr. CLARK. I think that is true, and, as I said a few minutes ago, I presume the Government would not undertake to reclaim it by post-mortem legislation. It comes to a question of liberality on the part of the Government and the recognition of a moral obligation.

Mr. WEBSTER. It could not reclaim it if it wanted to. If the company under the law, is it then stood, acquired legitimately a given amount of return, the Government could not retroactively deprive it of any part of it under the due process clause of the Constitution. It would be the company's money and the Government could not constitutionally take any part of it.

Mr. CLARK. It could not do it unless the acceptance of the guaranty had some standing in law.

Mr. WEBSTER. Could the acceptance of the guaranty by a company not included in the act have any legal effect?

Mr. CLARK. You are now asking me some questions of law that will come before the Court of Claims, if they do not settle this decision of the board of referees.

Mr. WEBSTER. I have no hesitation, Mr. Commissioner, in asking you legal questions, because I feel you are perfectly competent to answer legal questions.

Mr. BARKLEY. How many railroad companies and steamship companies have contested the Government's action in attempting to relinquish them from Federal control during the period of Federal control?

Mr. CLARK. I can not recall any that have contested it more tenaciously than this company.

Mr. BARKLEY. Did not all the railroads that were released contest the authority of the director general to relinquish them?

Mr. CLARK. They challenged the right to do it, but, speaking generally, so far as I am advised, it was the short-line railroads that contested, and they were relinquished from Federal control by notice stating that there was doubt as to whether they had ever been under Federal control, but that if they were they were now

relinquished. A committee representing the Short Line Railroad Association had a conference with the general counsel of the director general, and, as a result of it, there was devised the so-called short-line contract which the director general entered into with those various roads, and, so far as I know, none of them contested any further the fact that they had been relinquished.

Mr. BARKLEY. Have referees been appointed under section 3 in any other case except this?

Mr. CLARK. Yes; in many.

Mr. BARKLEY. To determine the question of whether the claimant was under Federal control at the time Federal control was terminated on March 1?

Mr. CLARK. I recall no case other than this in which that was the controverted question.

Mr. BARKLEY. Is the President, by accepting the verdict of the referees in this case, settling the legal question of whether or not this company was legally under Federal control March 1, 1920? If he could by negotiation or by compromise determine and settle that legal question, would not that practically deprive the Court of Claims of jurisdiction to pass upon the controverted questions that arise out of the law?

Mr. CLARK. I think there are many questions of law as to which the right of the carrier whose property was taken over by the Federal Government to demand adjudication in the Court of Claims is preserved, but as to those the President, by the broad powers conferred by the Federal control act, is authorized to compromise and settle with them.

Mr. HAWES. Mr. Clark, in summing this whole matter up, it resolves itself into about this situation: The Federal Government passed certain enactments giving control of the railroads to the Director General of Railroads, but it omitted this company and some other companies. When this company found that it was omitted through no fault of its own they then agreed or offered to come under the terms of the general act, which was refused. Now, this general act created an abnormal situation, and by reason of the act of the Government, first, in creating the general act and, second, in omitting this company from the jurisdiction of that act that company has suffered a loss which it wants to present here for adjustment. Now, it was no fault of this company, so far as you know, that it did not come under the operations of the general law, was it? I ask that question.

Mr. CLARK. I do not think it could be said that it was the fault of this company that it was not included in the guaranty. I assume, and I think I am justified in assuming, that if this situation had been before Congress when it passed this section 209 or when the committee or the conferees framed it this company would have been included, and all classes of companies to which this would apply would have been included. There would have been no controversy as to that.

Mr. HAWES. When they found that they were not under those provisions, they undertook promptly to get under them, did they not?

Mr. CLARK. I do not know whether they found out whether they were included before they filed their acceptance, or whether they

found it out later, but they filed acceptance promptly. When they found that they were not covered, they sought legislation to bring them in and that is what this bill proposes to do.

Mr. HAWES. By filing their acceptance first and asking for the legislation in the second place, if their acceptance had been granted, or if the legislation had been passed, all element of gambling in the matter of profits by being outside of this law would have been eliminated.

Mr. CLARK. Yes; because then the carrier would have accepted the provisions of the section and would have taken its chances as to the results of the operations for the six months' period.

Mr. HAWES. If there were a gamble on the chances of profits by this company remaining outside of the provisions of the Federal law, it was not a gamble that they sought, but it was a gamble which they would have avoided?

Mr. CLARK. I think so.

Mr. SANDERS. There might be a pretty plausible contention made that having elected to take the guaranty provision of this act, and having entered into a contract with the Government to that effect, the company might be estopped from making any other claim. I do not know about that.

Mr. MAPES. Mr. Chairman, in the statement made by Mr. Sanders who introduced the present bill, and which is presented as a part of the hearings, I note this:

> On April 11, 1918, by a specific proclamaiton, the President took over the control of the following four companies: Clyde Steamship Co., Mallory Steamship Co., Merchants & Miners' Transportation Co., and Southern Steamship Co.

Then a little further on in the statement, he says:

> On December 5, 1918, the United States Railroad Administration issued an order of relinquishment, signed by the Director General, specifically relinquishing the four carriers taken over by virtue of the above order of April 7, 1918, which included the Merchants' & Miners' Transportation Co. The three carriers other than the Merchants' & Miners' Transportation Co. accepted the order of relinquishment, so that Federal control ceased by virtue of the power to relinquish control by agreement with the carrier.
>
> The Merchants & Miners' Transportation Co. refused to accept this relinquishment, although by agreement this company took back its property on March 1, 1919, with the stipulation that it was without prejudice to any of its rights in the premises.

What I would like to ask is this: Are those other three companies that were taken over under the proclamation of the President on April 11, 1918, in the same situation that the Merchants & Miners' Transportation Co. is, except that the Merchants & Miners' Transportation Co. did not specifically accept the relinquishment that the director general made on December 5, 1918, and with the further exception that this company filed a claim under the guaranty clause of the act of 1920?

Mr. CLARK. Answering the first part of your question first—of whether the other three companies that were taken over in April, 1918, by proclamation have refused to accept relinquishment, as this one did—they are all four put in the same position now, except as conditions and circumstances might differ because of railroad ownership and control——

Mr. MAPES (interposing). Right on that one point, if you will allow me to interrupt, I had a little question in my mind as to whether these were all independent of railroad control.

Mr. CLARK. They are not entirely independent of railroad control. In fact, I think there is railroad ownership in all of these companies except the Merchants & Miners' Transportation Co. Mr. Kent says that the other three companies you have referred to are free from any railroad ownership or control; so that the only distinction between the three and the Merchants & Miners' Transportation Co. is that the three agreed with the director general that they should be relinquished from Federal control when he issued the proclamation in December, 1918. This company declined to accept that relinquishment and insisted then and, as I understand, insists still that it was never relinquished from Federal control, for the reason that the law under which the President's representative or agent was attempting to relinquish it provided that the President might, prior to July 1, 1918, relinquish control of all or any part of any system of transportation that had been taken over, and that after July 1, 1918, he might at any time during the period of Federal control agree with the owners of any system of transportation to relinquish all or any part of its properties.

Mr. MAPES. Do you feel that in equity the fact that this particular company refused to accept the order of relinquishment puts it in a better position than those other three companies are in?

Mr. CLARK. I think that this carrier stood on its rights and that the others exercised their rights. They made their election; they were willing to take their properties back, and did take them back, and the question of whether or not there is any distinction between them is a question of fact that would involve a close examination of what was done. They may have diverted their boats to a much more profitable use. I do not say that they did, because I do not know it.

Mr. MAPES. One of them has since gone into the hands of a receiver, has it not?

Mr. CLARK. I do not know, but I should not be surprised.

Mr. BARKLEY. It being assumed that there is no legal obligation, so far as the Government is concerned, if we should legislate upon the ground of moral obligation, would we be under any more moral obligation to legislate on behalf of the one that contested the Government's action than on behalf of the three that accepted it in good faith? If the legislation is to be based upon moral obligation—and if it was illegal as to the one that elected, it would have been illegal as to all—should the fact that they accepted what might have been an illegal relinquishment bar them from participation in the Government's moral obligation, if it is to be exercised as to the one that did not accept it?

Mr. CLARK. Morally, I think that question must be determined by the use to which they put their properties from the time they were relinquished.

Mr. BARKLEY. That would go to the question of whether there was any amount of money involved.

Mr. CLARK. No, sir; I do not think so. I think it is a question of what use they devoted their properties to. If they kept their boats

in the same service that the Government had been using them in, and did the best they could with them, I think the moral obligation as to them would be very simple, disregarding the technical questions or ground for contesting the relinquishment, but, on the other hand, if a company instead of keeping its boats in the unprofitable service which the director general was trying to get away from and which the boats were in prior to the period of Federal control, diverted the boats to overseas traffic and participated in the very liberal profits that resulted from such work at that time, then I think the question would be different.

Mr. BARKLEY. That is a question of fact.

Mr. CLARK. That is a question of fact that would have to be determined in order to measure the moral obligation of the Government, I think.

Mr. HUDDLESTON. I would be glad to have your idea as to the considerations which lie back of section 209, the guaranty section. What was the purpose of the section? Do you object to explaining your views on that?

Mr. CLARK. I have no hesitancy in expressing my understanding of that, although I do not attempt to bind any member of this committee or any of the conferees by my statement. My conception and understanding of it is that Congress determined that Federal control should terminate, but they knew that under the then existing level of operating expenses, which had been built up by the Government, and the then existing level of rates, which also had been fixed by the Government, it was impossible for a privately owned railroad to operate and retain solvency; so in the transportation act they proclaimed what is generally referred to as the rule for rate making and put upon the commission the duty of adjusting the rates. They then provided that during the six months' period following Federal control they would guarantee the roads that their revenues should not be less than for the corresponding six months during the test period by which the standard return during the period of Federal control was measured. In other words, it was simply extending the period of Federal control as to their earnings for six months beyond the absolute surrender of the properties, but with the additional agreement that if they earned more than that amount the excess should belong to the Government.

Mr. HUDDLESTON. May I ask if this consideration did not apply with substantially equal force to carriers which were not under Federal control at that time and which, perhaps, never had been under Federal control? In other words, their income had been fixed by competition, as well as in other ways, or had been affected by the Government control of other carriers. Also, their rates for labor and other expenses, cost of material, and of the various things that enter into railroad operation had been affected in the same way. Therefore do you not think that the same consideration should apply to all carriers?

Mr. CLARK. Not in the same measure, but in the transportation act Congress did include guaranty for the six months' period to carriers who never had been under Federal control, but not on exactly the same terms as to those carriers that had been under Federal control.

Mr. HUDDLESTON. Do you think that it is entirely consistent that that should be done?

Mr. CLARK. I think that Congress determined in the enactment of the guaranty provision in the transportation act to fairly protect every carrier for the six months' period in its financial returns, or every carrier which had been under Federal control, and, in a different manner and a somewhat different degree, every carrier that had not been under Federal control, but whose operations and the returns therefrom were affected in a greater or less degree by the fact of Federal control.

Mr. HUDDLESTON. Does not the same moral obligation exist as to all carriers now, whether under Federal control or otherwise? Does not the same obligation extend to all the carriers?

Mr. CLARK. I do not think so. I think that the carrier whose property was taken under Federal control and was retained by the Government until Federal control terminated had no opportunity for election. If the carrier had a right to agree with the director general that its property should be relinquished from Federal control, and it did so agree, I think that the Government was discharged of all its obligations to that carrier when it provided for proper compensation for the period during which its properties were under Federal control.

Mr. HUDDLESTON. Departing from that to the case of the Merchants & Miners' Transportation Co.; you mentioned a moment ago that they had simply stood on their rights, "as was entirely proper." They claim now not a legal right, but a moral right. They attempted to stand on their legal rights in refusing release from Federal control; they did not attempt to stand on their moral rights. Is there any reason that you can present to us why the Government should not now stand on its legal right since the carrier attempted to take advantage of the Government under the guise of their legal right?

Mr. CLARK. What I designated as a legal right was to refuse to agree to a relinquishment of its property. It could have no thought of guaranty for the six months following the period of Federal control. Nobody knew when Federal control would terminate. The fact was that these four steamship companies were taken over under Federal control by a secondary proclamation of the President. In December, 1918, the director general declared that he wanted to discontinue Federal control of those properties under the provision of the act to which I have referred and which authorized the President, after July 1, 1918, to agree with any carrier that its property should be relinquished. Three of them agreed to take their properties back, agreed to relinquishment, but one refused to agree to it.

Mr. HUDDLESTON. They agreed not because they wanted to, but because they thought the Government had the legal right to relinquish them?

Mr. CLARK. I do not know why they should assume that, because it was after July 1, 1918, and the law specifically stated that prior to that date but not after that date the President could release them without any election on their part. That is one distinguishing feature between the steamship lines and the short-line railroads, to which

I referred in answer to Mr. Barkley a few moments ago, the notices to the short-line railroads which were followed by the agreement or the contract to which I referred was served on those railroads prior to July 1, 1918.

Mr. HOCH. While this company did refuse to agree that the relinquishment was valid, it did, as a matter of fact, secure the control of its property on March 1, 1919, and had control of its property for one year prior to the guaranty period free from any restriction of Government control, during which period other carriers were subject to the restriction of Government control. Speaking of the legal aspect, do you not think that that is a factor to be considered in determining the equities of the case?

Mr. CLARK. It had control of its properties, but against its will.

Mr. HOCH. And was free to go ahead and operate its properties, just the same as any other company.

Mr. CLARK. It did go ahead and operate.

Mr. HOCH. The Government did not attempt to exercise any control during that period?

Mr. CLARK. I think not. However, the agreement was reached, and on March 5, 1919, the Federal manager in charge of the district in which this company operated wrote to the company and, among other things, said:

> It will, of course, be understood that in dealing with the matter in this way it is without prejudice to the position of either the Railroad Administration or the Merchants & Miners' Transportation Co. with regard to the question of compensation, the purpose of what is done now being merely to effectuate the relinquishment pursuant to the order of the director general dated December 5, 1918.

Then, under date of March 24, 1919, the general counsel of the Railroad Administration wrote the president of this company confirming a telephone message of March 1, in which he said:

> Your wire date. It is understood that we relinquish possession in accordance with our previous notice. Your acceptance is without obligation to operate and without prejudice.

In the second part of Mr. Mapes's question he referred to this carrier having filed a claim for guaranty. That is not quite accurate; it has not filed such a claim with us.

Mr. MAPES. What do you call it?

Mr. CLARK. It has filed with us an acceptance of the provisions of section 209 of the transportation act.

Mr. MAPES. From the fact that the President took over these four steamship companies under this order of 1919, and the fact that this company now is coming in under section 209 of the act of 1920, as amended, I assume that the original act authorized the President to take over the companies which were not controlled by railroads, but the guaranty provision of the act of 1920 only applies to those companies that are controlled by the railroads.

Mr. CLARK. Yes, sir. The authority to take over the railroads extended to all systems of transportation, while the guaranty provision of section 209 of the transportation act limited it to certain classes of carriers specified therein. One of the classes not included was a water carrier not controlled by a railroad. Nobody thought about such a carrier as that, nobody thought there would be any such instance, and it was not provided for.

Mr. LEA. Where does the Merchants & Miners' Transportation Co. operate these boats?

Mr. CLARK. They operate between Baltimore and Boston and between Baltimore and Providence.

Mr. LEA. Were the rates fixed by the Government during this period of 1918 and 1919?

Mr. CLARK. A good many of them were; not all of them were. All of the rates in which there was a joint participation with rail carriers were fixed by the President, and during the period that the President operated the boats he necessarily fixed the port-to-port rates.

Mr. LEA. I mean the period from the time that the company protested.

Mr. CLARK. The port-to-port rates were not under the jurisdiction of the Interstate Commerce Commission. The company was at liberty to change its rates at will, except in so far as they were joint rates with rail lines. As to such rates the company was prohibited, without the approval of the commission, from making a reduction prior to September 1, 1920.

Mr. LEA. Have you any information as to the percentage of the company's business that was affected by the rates?

Mr. CLARK. It was stated at the hearing in February that 80 per cent of its rates were controlled by the Government.

Mr. BARKLEY. During the year after the 1st of March, 1919, up to the relinquishment of Federal control in 1920, did the Merchants & Miners' Co. have control of the rates and, if not altogether, what proportion of its rates did it control?

Mr. CLARK. I just stated that at the hearing in February last, on what was commonly called the Coady bill, it was stated that 80 per cent of the rates were controlled by the Government.

Mr. BARKLEY. You mean by the Interstate Commerce Commission?

Mr. CLARK. Subject to the interstate commerce act limited by the Federal control act.

Mr. BARKLEY. Do you recall whether any schedules were filed increasing rates during that year?

Mr. CLARK. I do not think there were. I am quite safe in saying they were not important.

Mr. BARKLEY. Was there any law or any fact that prevented the company from filing increases?

Mr. CLARK. No. The law prohibited them from reducing without prior approval of our commission. The Government took that step in order to protect the revenues under the guaranty.

Mr. BARKLEY. Is it not true that Congress, the commission, and everybody recognized that it would take perhaps six months after the railroads were turned back to the owners for the commission to adjust the rates so as to bring the revenue?

Mr. CLARK. Yes, sir.

Mr. BARKLEY. And that during the six months' adjustment period the earnings of the roads should not be less than they had been during the test period?

Mr. CLARK. Yes, sir.

Mr. BARKLEY. These steamship companies, however, were operating their own concerns, whether they did so by agreement or protest,

and they could have filed schedules of increases of rates at any time after the 1st of March, 1919, until the 1st of March, 1920, and possibly through the six months of the guaranty period if they wanted to do so?

Mr. CLARK. They could have done that. Of course, the practicability of it is doubtful. They could not have made their through rates higher than the all-rail rates and expected to get the business.

The CHAIRMAN. Mr. Clark, is there anything further you desire to say?

Mr. CLARK. No; I do not think of anything I care to say.

The CHAIRMAN. We thank you very much.

(Thereupon the committee took a recess until 7.30 o'clock p. m.)

AFTER RECESS.

The committee met at 7.30 o'clock p. m.. pursuant to the taking of a recess.

The CHAIRMAN. If the gentlemen of the committee will come to order, we will proceed with the consideration of the matter before us. The chairman has asked Mr. Wright, who has had to do with the control of water lines in behalf of the Railroad Administration, to appear here to-night to give us any information he sees fit as to the facts bearing on this bill and the situation generally.

Mr. Wright. would you prefer to make a complete statement without interruption?

STATEMENT OF MR. FRANK C. WRIGHT, ASSISTANT DIRECTOR, DIVISION OF OPERATION, UNITED STATES RAILROAD ADMINISTRATION, DURING FEDERAL CONTROL.

Mr. WRIGHT. I would much prefer to be questioned, if I may be.

The CHAIRMAN. As you go along?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. WRIGHT. You wish me to go right along?

The CHAIRMAN. Yes; proceed as you wish in presenting the subject, and let questions follow as they will.

Mr. WRIGHT. After April 15, 1918, I was assistant director of operation of the Railroad Administration, in charge of the New England coal fleet. Beginning July 1, I took charge of the coastwise steamship lines and all other marine activities of the Railroad Administration, and continued that work until Federal control ended.

The President's proclamation in December, 1917, took over all of the marine activities of the rail carriers. Those consisted. on the Pacific coast, of the San Francisco & Portland Steamship Co., belonging to the Oregon Railway & Navigation Co.; on the Great Lakes of the Lehigh Valley Transportation Co., belonging to the Lehigh Valley Railroad Co., and several ferry lines across the Great Lakes; on the Atlantic coast it took over the Southern Pacific Steamship Lines, which were an integral part of that railroad and were not owned by any intermediary corporation; they were simply classed as the cars and engines of the Southern Pacific Railroad Co. You will see the pertinency of that in the Esch-Cummins Act. The Old

Dominion Steamship Co., operating between New York and Norfolk: 57 per cent of its stock was owned by five railroads in the South, which bought it over. The New England Steamship Co., on Long Island Sound, was owned by the New England Navigation Co., which is owned by the New Haven Railroad Co. On the Chesapeake Bay, the Baltimore Steam Packet Co., which is owned by the Seaboard Air Line, and the Chesapeake Steamship Co., two-thirds of which is owned by the Southern Railroad and one-third by the Atlantic Coast Line. The Ocean Steamship Co., of Savannah, owned by the Central Railroad of Georgia. There were a few other lines, such as the Direct Navigation Co., which is a towboat and barge line on the Gulf, belonging to the Southern Pacific. There were also the usual ferry lines, like the North River ferry lines and the Delaware River ferry lines, belonging to railroads.

On April 11, 1918, the President issued a second proclamation taking over four lines on the North Atlantic, the Clyde Steamship Co., the Mallory Steamship Co., the Merchants & Miners' Transportation Co., and the Southern Steamship Co.

Mr. GRAHAM. Were they independent companies?

Mr. WRIGHT. Yes. I am remembering your question to Chairman Clark this morning which he answered, through oversight, inaccurately. There was not one dollar of railroad interest in any of those companies and I doubt whether there had been for 20 years. They were independent lines. Their best boats had already been commandeered by the Shipping Board for the benefit of the Army and the Navy, and the vessels left in the Clyde and Mallory service were mostly inefficient craft which were not acceptable for trans-Atlantic service, even for the movement of freight across the ocean. Of course, all of their best passenger and cargo vessels were immediately put into the Army and the Navy service. That proclamation, like the one taking over the railroads, was issued on the authority of the war power you gentlemen gave to the President. The proclamation is silent as to railroads. As far as I can ascertain the intent and purpose of the Railroad Administration at the time, it was to make sure that the coastwise service could be absolutely coordinated with the rail service. I will get into that later if it is desired—that feature of it—but it is just as silent as to the railroads as the Esch-Cummins Act is as to these coastwise steamship lines. There was apparently no relation in the minds of whoever framed that proclamation between the boats and the railroads, and when it came to entertaining claims for compensation from these boat owners the Railroad Administration decided that the only yardstick it could apply was the railway control act, which, as I stated, is practically silent as to ships. It contained two very serious omissions and they both related to the water. The railroad control act did not cover a transaction like this and it omitted the jurisdiction of the admiralty courts. It was tried out later in 1918 and it was made possible to have a process lie against a Railroad Administration vessel, which could not have occurred on land under the terms of the act, but somebody overlooked this whole water question in the railway control act, and our troubles, particularly with the Merchants & Miners, grew out of that. In April, 1918, when the second proclamation was issued——

Mr. MAPES (interposing). Were the steamship companies overlooked in the railway control act or in the act which turned them back?

Mr. WRIGHT. In both of them. The framers of the railway control act omitted the entire steamship question, forgot about it. Now, in the Esch-Cummins Act the question of guaranty was omitted.

Mr. MAPES. Notwithstanding that omission, the President did issue an order to take them over.

Mr. WRIGHT. As I outlined in the beginning, we took a large number of vessels over with the railways; those that were owned in part or in whole by the railways came over.

Later, when the freight situation became dangerous, on April 11, 1918, four months after the other proclamation, they took over these four fleets, but that still left some. The Eastern Steamship Co., operating from New York to Boston and from Boston to Portland and Bangor, never was taken over. There was one on Long Island Sound, running between New York and Providence, which was not taken over; another was the line from Washington to Norfolk.

Mr. MAPES. Those two lines could have been taken over as well as the four which were taken over under the order of April, 1918, could they not?

Mr. WRIGHT. I think they should have been taken over, sir, and I feel that in fairness to the service along this coast the Esch-Cummins Act should have prescribed like treatment for all of them. If you care to have my opinion on that right now, I would like to state that the objective should have been the maintenance of the service during the six months following Federal control, and the fact that some companies were supported out of the Federal Treasury for 26 months ending March 1, 1920, should not have injured those few that were not supported out of the Treasury during that period and had all of the liabilities but none of the benefits. In other words, if this were a blanket proposition which was designed to support the public service, there should have been no omissions. But we have the mixed-up situation that I am trying to describe.

Mr. HOCH. In your view of it, the proclamation of April, taking over these four companies, had no relation whatever, then, to the Federal control act?

Mr. WRIGHT. No, sir; but that was the position taken by the owners of those lines in their demand for compensation; they did not want to accept for their systems of transportation the railway basis of compensation, but when we came to find authority to pay them we had no authority except the railroad control act. That was our basis of compensation.

Mr. HOCH. In the President's proclamation did he affirmatively vest the control and operation of these lines in the Railroad Administration?

Mr. WRIGHT. Oh, yes, sir. The proclamation was drawn in the Railroad Administration's headquarters and was signed in order to assist them in some very important freight movements. If it will not take too much time I will try to give you the reason, as I understand the reason, for taking over those fleets. The railway line from Boston to Richmond, Va., was blocked tight, and it connected every important port of embarkation. It was easier to get through any-

where than it was to get freight up and down this coast between Richmond, Va., and, perhaps, New Haven and Boston.

Mr. GRAHAM. Was that due, in large part, to conflicting priority orders?

Mr. WRIGHT. No, sir. Priority orders disappeared, in large measure, after January 1, 1918. They probably were large contributing causes under private management, but they lost a good deal of their force and effect after Federal control began. The primary cause, I have always believed, was the effort to do, perhaps, five times the normal volume of business through those ports.

Mr. GRAHAM. I have been advised that one of the reasons for taking over these systems was the blockade caused by conflicting priority orders which were issued by various governmental agencies which were not coordinating.

Mr. WRIGHT. Those were unquestionably a large factor but not the whole factor or the whole reason. There were, perhaps, 200 separate managements and it was mentally and physically impossible, granting full disposition to cooperate, to get those lines working together and concentrated on this war effort in the same way. That has always been my belief, but I do not offer it here as the actual reason. However, it was necessary to concentrate control temporarily. We had to subordinate everything to the War and Navy Departments' needs.

Mr. GRAHAM. Perhaps I am going outside the question, but could that have been done without Government operation? Could it have been done by Government control?

Mr. WRIGHT. I doubt it, sir. I have never believed in Government operation, but in the situation existing in the last quarter of 1917, and until the armistice in 1918, I can not conceive of hitching up the team we had to pull in the same harness, even with all disposition, and there was never any lack of disposition among transportation men.

Mr. GRAHAM. What link in the system did the Merchants & Miners' Transportation Co. contribute?

Mr. WRIGHT. Well, the Merchants & Miners' Transportation Co. operated lines between Boston and Providence and Norfolk and Baltimore, which excludes their two lines from Baltimore and Philadelphia to Jacksonville. The lines which constituted the detour lines around this railroad congestion which I have spoken of, from Hampton Roads and Boston and Providence, were very important. The bulk of the cartridges were made in New England and Hampton Roads was the second largest embarkation port. That answers that.

There was a very large movement of marines and sailors between New England and Hampton Roads in both directions; all the time the boats ran full of soldiers, sailors, and marines. It was a very great thing to be able to bring merchandise to Norfolk from the South, turn it over to that boat line and get it to New England as against letting that car pile up in this log jam we had. It might have been months in going through. There was no such thing as getting it through New York City; it would have to go around through Harrisburg, Scranton, Wilkes-Barre, and across the river at Albany, or up through Eastern Pennsylvania and across the river at Poughkeepsie. In either event you would have had to move

that car of southern products through four lines which had their ends piled full and there would have been a cross current in the crossing of two very heavy streams of traffic in a very narrow place. So that the taking over of these boat lines did materially relieve the situation as between Hampton Roads and New England. New England at the time was producing the tent cloth, the overcoating, the underwear, the cartridges, a great deal of the chemicals, and rifles. I think we had one rifle plant at Eddystone, Pa., but a large majority of the small arms were made in New England. We had the same situation as to coal. We had to make sacrifices in order to keep that flow of coal going into New England or we would have slowed down the industries on which the Army and the Navy were depending.

I would like to state that the taking over of these four boat lines antedated my arrival, and after I was asked to operate them I did not see how their usefulness existed more than the first six months or, at least, six months from April to October.

Mr. GRAHAM. To relieve the congestion?

Mr. WRIGHT. Yes, sir; because the conditions began to get better immediately after the armistice, and by March we had a large amount of unused freight capacity. But at the time the move seems to have been good judgment. For example, we had to utilize a number of Dutch and Danish vessels in this coastwise service in order to get cotton to New England. I am sure the chairman will remember the situation which caused all cotton to go to Savannah and Brunswick and to be put on the water there, abandoning all-rail routes to New England, over which it had always moved. It was impossible to move those freights across the Hudson River and into New England over the Boston & Albany, the Boston & Maine, and New Haven railroads if you were going to move coal, food, and copper to New England. It was not physically possible to do the two things. So the boat service was an immense help. When the armistice was signed it destroyed plans for moving cotton in that fall and winter through Savannah; they were going to bring it all either to the Gulf or to Savannah and Charleston and boat it to New England; they were not going to try to put any of it on the railroads, and this fleet, of course, would have made that possible.

The Merchants & Miners' fleet was one which had not been injured by the Shipping Board's activities: I mean injured in the sense that they had taken the vessels out of it, as they had out of every other line. The boats were designed to operate about a 48 to 60 hour run, and they were bunkered accordingly; to have put those boats into transatlantic service would have sacrificed their cargo space to bunkers; they are able vessels, in very good condition, but they are small boats; they are admirably designed for the company's service, but they did not fit the Shipping Board's transatlantic service nor the plans of the War Department or the Navy Department for transatlantic service. So when that proclamation took effect we found the entire service of the Merchants & Miners' Co. unimpaired, and the vessels were of great aid.

The rest of them, as I stated before, had been cut up and the best vessels put into the war effort. The operation of all the coastwise lines was at a terrific loss; that was because of their use of the ports

which were used by the convoys—all the transatlantic vessels in the Government service and in the service of foreign Governments. They set up a competition for men and materials which these little coastwise vessels had to meet. It was a common thing, as at New York, for an Old Dominion vessel docking at Pier 25 or Pier 26 to have to meet the competition of transatlantic liners, also under Government control, at adjoining piers, so that the basis of cost of a coastwise line could not be made less than the highest-priced line operating to Europe or to the Mediterranean, and wherever the Army and the Navy were making a high-pressure effort in trying to get men or materials regardless of cost—as they were justified in doing at that time—the small coastwise vessel in commercial service had to meet those costs, but it had its rates fixed by the subnormal rates of the railroads. It was not possible, as was stated by Chairman Clark this morning, to make these coastwise rates any higher than the competing rail rates. In a few cases the port-to-port rates were higher and they ignored the rail competition, but as a general rule all of them were operating under a system of rates made by the commission. All of them were parties to joint rail and water rates to the interior, because they had to have that business to live. So you can see that the income was fastened to a subnormal rate structure while the outgo was whatever the war activities made it at the port they served.

The same reduction of human effort was manifest there in the longshore work just as it was in every European country. The longshoremen moved, perhaps, one-fourth the tonnage per day that they do now, and the National Adjustment Commission gave them as high as 75 cents and a dollar an hour.

Mr. GRAHAM. That is a new commission to me. What is it?

Mr. WRIGHT. That was a temporary commission during the war set up by the Shipping Board to regulate marine wages.

Mr. GRAHAM. I never heard of it before. What was the personnel of it?

Mr. WRIGHT. Prof. Ripley, of Harvard, was at the head of it. Mr. O'Connor, who was the president of the longshoremen's union and who is now on the Shipping Board—and a very good man, by the way—sat on that commission, and the third member was a representative of the coastwise lines, if it were a coastwise longshore question, and if it were an overseas question there would be a representative on the commission of the overseas lines. The body of three fixed those wages.

Mr. GRAHAM. The longshoremen's wages?

Mr. WRIGHT. Yes, sir. We always in the coastwise expenses collided with the greater ability of the overseas lines to pay; the rates were, perhaps, 25 times as great per unit as these coastwise freight rates, but we had to bid for the same man, and you can see what happened there. It was true of coal, which, of course, was under Government price control at the time, and the Railroad Administration was able to get priority for the coal supply of these coastwise vessels at the Government price, so it was not difficult, but I will state in passing that when these lines were handed back the Fuel Administration suspended its orders for the second time, so that the prices went to the sky during this period of guarantee. That was one

heritage which we left the coastwise lines which was admittedly bad. If the Fuel Administration had been continued during the year 1920 a very large percentage of the transportation deficit, both on land and on water, would not have occurred. A very great complication arose from dropping those Government prices on fuel just at the time they were dropped. I would be very glad to answer any questions.

The CHAIRMAN. Mr. Wright, can you speak directly to the proposition of this bill, as to what the administration or anybody connected with it, or maybe yourself, may think in regard to its merits?

Mr. WRIGHT. The merits of this relief bill?

The CHAIRMAN. Yes.

Mr. WRIGHT. I feel that the Merchants & Miners is entitled to relief unquestionably for six months after March 1, 1920, but I feel that their situation actually, not technically, is no different from any other line navigating the same waters and entering the same ports, and I should say that the lines which, like the Merchants & Miners, serve the New England territory, are entitled to exactly the same consideration. The boats of the Southern Pacific, the largest of all the fleets, with no intermediary corporation—it is an integral part of the Southern Pacific Co., a railroad company—are no more than cars, engines, cabooses, or passenger coaches, and they got a guaranty on the basis, I think, of $2,000,000 a year, because they were a part of a railroad. The guaranty was certainly made for the purpose of maintaining the service. That is the public side of it; that comes before the relief of the stock and bond holders, and if it is a service question, if that is right, how can it be located with one corporation? I should dislike to see the Merchants & Miners lose any relief, and I do not think it will, because the total amount will be found relatively small; after the earnings of the lines are considered, the difference between them and the guaranty will not be large enough, or should not be large enough, to produce adverse effect.

The CHAIRMAN. Do you think there are any other lines, with respect to the legislation now on the books, which are comparable to the Merchants & Miners Co.?

Mr. WRIGHT. No, sir; I do not think any other line can qualify as the Merchants & Miners can qualify. Neither do I think you can set up a similar situation, or find any lines that are placed like the Chesapeake Steamship Co. I can not agree with Chairman Clark that the make-up of the ownership of that steamship company, which has complied with the statute in every respect, should prejudice its relief under the bill. I do not see that it has anything to do with it. The corporation which is asking for relief performed the service for the six months, took care of the public fully, and the fact that some of its stockholders took an opposite point of view in their rail operations should not prejudice the Chesapeake line at all. The administration operated that line and the Baltimore Steam Packet Co. as one unit, under the same manager; one was owned by the Seaboard Air Line and the other one was owned by the Coast Line and the Southern, running from the same port to the same destination at the same hour. You could not find in the transportation business in this country any two cases so nearly identical as those

two lines, and I can not see how this committee can differentiate between them.

The CHAIRMAN. Under my lead you have anticipated, very naturally and properly, I think, the contention which we assume will be made at this hearing by the Chesapeake Steamship Co. This bill did not have them in mind particularly when it was prepared, but since its introduction they have appeared before some of the committee, the chairman at all events, and maybe Mr. Sanders and others, holding out that they feel that they should be taken into this bill through some modification of it. With that in mind the chairman saw fit to lead you to answer that question, because the committee will have to face it before we get through, and it seems as though it would be well to have you say anything you choose to say in reference to your attitude or views about the Chesapeake Co. at this time rather than to ask you to suspend now and, after they have made their presentation, come again. So we will ask you, if you will, to comprehend their anticipated appearance and make as full a statement as you wish in that connection. I think the Chesapeake Co. will surely present its case to us.

Mr. WRIGHT. I will be very glad to do that, but I hope it will be understood by every member of this committee that I have no interest in any one company, directly or indirectly.

The CHAIRMAN. The chairman stated in the beginning that you were invited to tell what you choose to tell in reference to the general situation, particularly from the administration's point of view.

Mr. WRIGHT. My personal interest in the thing is, if I can, to assist in correcting the omission in the original bill, which has created an immense amount of trouble and litigation, and the omission in the Esch-Cummins Act.

The CHAIRMAN. Gentlemen of the committee, Mr. Wright has made statements in respect of both of these companies, and I think it will be entirely in order for the committee to question him about any matter connected with either company. Later on it is the purpose of the chairman to afford an opportunity to representatives of both companies to make their own statements. The committee can very easily see just what is ahead of it and can interrogate Mr. Wright now just as well as after the representatives have made their statements.

Mr. WRIGHT. I would like to make clear that the Railroad Administration is in controversy with the Merchants & Miners' Co. over their compensation. The claimants originally asked for the Shipping Board's requisition charter rate per ton, the same as was paid by the Shipping Board on transatlantic vessels, but we found ourselves with only one authority to pay, and that was this railway control act, which stated that they should be paid on the basis of their railway operating income. It was one of the worst misfits that you could conceive of, but it was all we had; so we tried to settle on that basis, but with no success; the Merchants & Miners' Co. held out for a long time, and so did the Clyde, Mallory, and Southern Steamship Cos.

There was a discussion with all of those companies just following the armistice. On December 4, in a discussion over pay, the Clyde, Mallory, and Southern Steamship Cos. were asked if they wanted

their boat lines back, and they said they did, most emphatically, so they were handed back to them the next day; but the Merchants & Miners' Co., the other company mentioned in the second proclamation, declined to receive its property. Director General McAdoo, on December 5, 1918, signed an order relinquishing all of the companies named in the proclamation of April 11, but the Merchants & Miners' Co. declined to take their property back, so that we were compelled, from December 5 until March 1, 1919, to operate that line for the account of whom it might concern, a formal and final relinquishment being in effect signed by Mr. McAdoo and an absolute refusal being in effect signed by the Merchants & Miners' Co. So we had a very rough time, particularly with Congress. We had a communication from every Senator from Maine to Florida—I think 14 of them—urging us to keep that steamship line in the interest of the service.

Mr. GRAHAM. You would not be so unkind as to lay that on us?

Mr. WRIGHT. No; I would not say the House did that; but quite a number of our senatorial friends about moved up into the office during that period. The time came, in February, 1919, when General Counsel Payne decided to end that twilight situation and notified the Merchants & Miners' Co. that we would turn the property back to them on the 1st of March, whether they operated it thereafter or not. We were prepared, in case they did not take it back and did not perform the service, to operate some idle vessels of the Shipping Board between Norfolk and Boston and Baltimore and the South and between Philadelphia and Providence rather than to have the public suffer, but they elected to operate and take the line back without prejudice to their contention; that was very clearly understood, and after they inventoried the situation they decided to maintain the service, or that they would run it for a couple of weeks, and then decided they would meet their common-carrier obligations and keep up the service, which they did until all the railroads went back the year following. But they made a very heavy loss. It was not possible, with the railroads operating under their subnormal rates, for the boat lines, using the same rates, to make as good a showing as the railroads. The Merchants & Miners' Co. operated some boats between the Sugar Islands and Newfoundland, I think, in foreign service, which was not a regulated traffic, and they made some money which we would not have made because we were confined to continental North America. So the operation did save the Government a great deal of money; there is no doubt about that. I think that is all I have to say in the way of a direct statement.

Mr. HOCH. In referring to the cases of the Chesapeake Co. and the Merchants & Miners' Co. I understand you are not at all contending that the legal status of the two cases is the same, but that in equity you think they should stand upon the same footing. Let me see if I have the facts correctly in mind. I understood you to say that two-thirds of the stock of the Chesapeake Co. was held by the Southern Railroad.

Mr. WRIGHT. Yes, sir.

Mr. HOCH. The Southern Railway and the Chesapeake Co., of course, were taken over under the Federal control act—that is, the

Chesapeake Steamship Co.; then the Southern Railway elected not to accept the guarantee. You are contending that the minority stockholders of the steamship company should be given a guarantee in spite of the fact that the railroad company which controlled two-thirds of the stock chose not to elect for itself or for the subsidiary company to take the guarantee?

Mr. WRIGHT. I would not put it on that basis at all. The Southern Railway would be no more than one man, John Smith, would be as a stockholder in the Chesapeake Steamship Co. It had its own contract with the Government during Federal control, its direct relation with the Government in every way. The Government did not take into consideration the stockholders individually. The Atlantic Coast Line and the Southern Railway controlled that company; how much was with one and how much the other, or how many shares I might have had or you might have had, had nothing to do with the view of the Congress or the intent and purpose of Congress with respect to that service which it sought to maintain by public financial assistance. The Chesapeake Steamship Co., as I understand it from Chairman Clark—I haven't seen the record—accepted the act formally, just as every railroad did, whether it had the right to or not. It is in there on its own feet.

Mr. HOOCH. Well, the majority stockholder, which in this case was the Southern Railway, had unquestionably the right to elect for the subsidiary company, didn't it, the acceptanee of the guarantee?

Mr. WRIGHT. If they had, it would have been legally, as I understand it, before you in an orderly way. It would have had to have acted in its proper capacity as a stockholder in the Chesapeake corporation. No formality of that kind occurred. The Southern Railway elected not to take the guarantee. It made a huge loss by it. It might have been a stockholder in the Baltimore & Ohio Railroad Co.; that would not have tied the Baltimore & Ohio Railroad to that anchor when it went overboard.

Mr. HOCH. I am perhaps a little slow in getting that. Is the complaint simply that the minority stockholders suffered by virtue of the failure of the majority stockholder?

Mr. WRIGHT. I haven't heard it stated in that way. In fact, I haven't heard very much about the details of the contention. If the minority stockholder, the Atlantic Coast Line, was injured by it, I haven't understood that it has formally complained.

Mr. LEA. Did you understand that somebody did file an acceptance for the Chesapeake Co.?

Mr. WRIGHT. I did. The president of the Chesapeake is in the room. He probably can state just what occurred. My own view of it was that the Chesapeake Co. operated its service during that six months without regard to its hope of being reimbursed. The operating results are here. I would like to put them into the record, if it is agreeable to the committee. There are others that I want to put in for other companies.

The CHAIRMAN. You have that privilege to put that in, or any other matters presented with your statement.

The paper referred to follows:

Chesapeake Steamship Co.—Schedule C for 1920.

[Figures in italics indicate deficit.]

	March.	April.	May.	June.	July.
Total credits	$129,363.47	$149,123.80	$158,479.24	$163,225.89	$174,906.46
Total debits	157,918.24	159,758.58	159,430.01	156,438.42	161,039.60
Water line operating income (or deficit)	*28,554.77*	*10,634.78*	*950.77*	6,787.47	13,866.86
Interest accruals	1,039.58	1,039.58	1,039.58	1,039.58	1,039.58
Equipment trust accruals	10,000.00	10,000.00	10,000.00	5,000.00	5,000.00

	August.	Total.	Adjustments.	Total as adjusted.
Total credits	$171,565.48	$946,664.34	$4,351.12	$951,015.46
Total debits	184,446.09	979,030.94	2,475.94	981,506.88
Water line operating income (or deficit)	*12,880.61*	*32,366.60*	1,875.18	*30,491.42*
Interest accruals	1,039.58	6,237.50	.....	6,237.50
Equipment trust accruals	5,000.00	45,000.00	.....	45,000.00

Mr. WRIGHT. Now, the amount is not large comparatively. The average per month is $9,547.77; the guaranty for six months, $57,286.60. That is one-half of the standard return for the test period. They made a deficit of $32,366 for that period. So the amount involved is not large. I am not dwelling on it for that reason, but if we are correct in our understanding that it was the purpose of the Congress to sustain that service until it could get on its own feet there is one of the clear-cut cases in marine navigation; the service went right along and the company went into red ink pretty deeply for it, and I can not see where, what was in the mind of its principal stockholder, acting for itself and entirely separate, in a corporation operating on land, what that has to do with it.

Mr. MERRITT. The only way the corporation could speak was through its own executive officers and its own board of directors.

Mr. WRIGHT. I think so, sir. And I believe that the Merchants & Miners', operating right alongside of it, kept up its service at a much greater loss and is entitled to consideration from the same viewpoint, that the public got the benefit. I can not see that the fact that the Merchants & Miners' was under Federal control part of the time and had its deficit met out of the Treasury qualifies it before the statute or the Congress any more than the Eastern Steamship Co. would be, running from New York to Boston and Boston to Bangor, which never was under Federal control but did perform this service in time of stress.

Mr. DENISON. Do you happen to know, Mr. Wright, whether or not the Chesapeake company made any demand or effort on the part of the Southern Railway, which controlled it, to receive the guaranty?

Mr. WRIGHT. I do not, sir. That would be entirely in the records of the Interstate Commerce Commission.

Mr. GRAHAM. Has the Clyde Line or the Mallory Line taken any action—did they file any acceptance on this or attempt to do so to get the guaranty?

Mr. WRIGHT. I think they did. I would like to ascertain in the morning and file a brief statement on that if it is permitted.

Mr. GRAHAM. It is your present impression that they probably did attempt to accept the provisions of the Esch-Cummins Act in the guaranty?

Mr. WRIGHT. Yes, sir. They operated their lines, Mr. Graham, between December 5, 1918, and March 1, 1920, with the exception of the line between Norfolk and Philadelphia, which was very unprofitable—they operated them at a terrific loss. They did not get Government rental during that time, and they did not get the guaranty afterwards.

Mr. GRAHAM. That is the reason I am asking you these questions. If I am asking you any questions that you do not want to answer, you must say so. What do you think about these companies?

Mr. WRIGHT. I think they are entitled to the same consideration as the others.

Mr. GRAHAM. In justice, you mean?

Mr. WRIGHT. Yes, sir; from a service standpoint, what the public got out of it.

Mr. GRAHAM. As a matter of fact, Mr. Wright, I am curious to know—these other lines that never were under Government control. I assume they suffered a heavy loss during the same period?

Mr. WRIGHT. Some of them did, but they were all helped by their abler vessels going into transatlantic trade, overseas service, at the high rates of compensation prevailing. They lost on their American coastwise service and made it up in overseas.

Mr. GRAHAM. Do you have any idea about how large the probable loss would be to the Clyde Line and the Mallory Line during the period of Government guaranty?

Mr. WRIGHT. I would estimate it roughly for the Clyde Line at $100,000 a month during the six months; for the Mallory Line perhaps more. I would like to look that up.

I have just asked their counsel for some figures here. The Clyde Line, from March to August, inclusive, lost $117,000 a month, in round figures. They were in red ink that far. Their standard return would have been $41,955—I beg your pardon; I gave that for a month; that is not correct. That is for the period, $117,000 for six months, net deficit. The Mallory Steamship Co. was $908,508.65. Their standard return for the six months would have been $758,596.

Another line operating between Philadelphia and Houston, a small line, the Southern Steamship Co., had a loss of $104,933. Their standard return would have been almost exactly the same.

Mr. GRAHAM. Now, Mr. Wright, there is one other thing that occurs to me. The Merchants & Miners' Co., as I understand it, were operating several of their own vessels, and I think I have heard here in the hearings some place that the Government control only was exercised over 14 of them. Am I right about that?

Mr. WRIGHT. Yes; but that was all of them.

Mr. GRAHAM. That was all of them?

Mr. WRIGHT. That was all.

Mr. GRAHAM. Well, they have more vessels now, I believe.

Mr. MERRITT. What Chairman Clark said was that their income was based on the receipts of 23 vessels.

Mr. GRAHAM. Yes; I remember.

Mr. MERRITT. And when the Government took them over they got rid of 9 or 10. About December, 1914, five months after the war started in Europe, the price of vessels began to rise, and in 1916 and 1917 it went to the sky. There has been nothing like it in marine history. The Merchants & Miners was beginning to feel the loss of revenue in its regular operations, and it sold some of its best vessels, the *Suwanee* and the *Somerset*, two of the newest and largest vessels. They sold for about twice what they should on the books. Then they sold some older ones which were practically written down very low on the books. They made a very large profit on the entire transaction and reduced the fleet, I think, from 23 to 14 in the period between December or January, 1914 and 1915, and the beginning of Federal control. So that their compensation was based pro rata on the tonnage received by the Government in the period of Federal control.

Mr. GRAHAM. So they had 14 vessels when you took them over?

Mr. WRIGHT. Yes, sir.

Mr. GRAHAM. That was their entire fleet?

Mr. WRIGHT. Yes, sir.

Mr. GRAHAM. And you turned back that many? Is that correct?

Mr. WRIGHT. That is correct.

Mr. GRAHAM. If the President did not have any power under the Federal control bill, I assume that he did have power under the national defense act?

Mr. WRIGHT. The Federal control bill, as I read it, does not confer power to take anything. That bill came up before you gentlemen for the first time, I think, three weeks after the taking. The taking was under the war power given by Congress to the President.

Mr. DENISON. In the Army appropriation bill. It is a provision in the Army appropriation bill.

Mr. WRIGHT. The railway control act gave no power to take anything.

Mr. GRAHAM. No; I know it did not. I was thinking it was under the national defense act.

Mr. WRIGHT. The joint resolution dated April 6 of the Senate and House, 1917——

Mr. SANDERS (interposing). May I interrupt you there, Mr. Wright? The real authority under which all the carriers were taken over was the authority of August 29, 1916.

Mr. WRIGHT. Yes, sir

Mr. GRAHAM. That is what I suggested.

Mr. WRIGHT. You can see the mix-up caused by this railroad control act overlooking the marine activities, which were interlocked with the railroad situation and proved to be the salvation of the eastern railway situation during the actual fighting period.

Mr. GRAHAM. Mr. Sanders, is that act broad enough to include steamship comapnies?

Mr. SANDERS. Yes. It is very short. I will read it. It is part of the appropriation act:

The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof.

And so forth.

Mr. GRAHAM. That is general enough to include water and land both.

Mr. LEA. Wasn't there also a statute that gave the President power to make settlement or compensate the companies taken over?

Mr. SANDERS. That is the Federal control act.

Mr. LEA. Outside of that, wasn't there a shipping act providing for that?

Mr. SANDERS. I don't know.

Mr. WEBSTER. Mr. Wright, there is one matter that I want you to clear me up on. Some questions have been asked as to whether the Mallory Line and the Clyde Line filed an acceptance under the transportation act of 1920—that is to say, filed an election to take the guarantee. That act by its terms only applied to carriers which were under Federal control at the time Federal control terminated, did it not?

Mr. WRIGHT. Quite right, but there was a chance, and the reason I hestitate is there were quite a number of concerns accepted anyhow. May I ask the counsel for the American Steamship Association, who is in the room, whether he can state that or not?

Mr. WEBSTER. Yes.

Mr. E. H. DUFF. No; I can not state that.

Mr. WRIGHT. Now, I think Chairman Clark filed in a previous proceeding a statement of acceptances of steamship lines. I will see him in the morning and advise the chairman just what did occur.

Clyde Steamship Co.

Six months—March to August, inclusive—1920:	
Standard return, net after taxes	$41,955.10
Regular return, including other income and taxes, etc., net loss	117,044.42

Mallory Steamship Co.

Standard return, net loss after taxes	758,590.41
Regular return, including other income, and deducting for interest, etc., net loss	908,508.65

Southern Steamship Co.

Standard return, net loss after taxes	104,378.25
Regular return, including other income, loss	104,933.25

Clyde Steamship Co.

For first six months after released from Federal control—from Dec. 1, 1919, to May 31, 1919:	
Standard return	446,195.63
Regular return, including other income	219,268.30
For 18 months ending Nov. 30, 1920:	
Standard return	121,540.78
Regular return, etc., loss	195,480.44

Mallory Steamship Co.

Six months ending May 31, 1919:	
Standard return	$308,539.48
Regular return, etc	226,604.73
Eighteen months ending Nov. 30, 1920:	
Standard return, loss	1,161,684.46
Regular return, including other income, etc., loss	1,422,994.94

Southern Steamship Co.

Six months ending May 31, 1919:	
Standard return	147,686.95
Regular return	131,533.04
Eighteen months ending Nov. 30, 1920:	
Standard return, loss	336,454.31
Regular return, loss	340,746.46

Mr. WEBSTER. My questions go a little further than that. I understood you to say a moment ago that the Clyde Line and the Mallory Line represented to the Railroad Administration that they were very anxious to have their lines back, and that the director of railroads the following day or very soon thereafter handed their lines back to them.

Mr. WRIGHT. Yes, sir.

Mr. WEBSTER. And they accepted them?

Mr. WRIGHT. They accepted them; yes, sir.

Mr. WEBSTER. So, obviously, they were not under Federal control at the time of the termination of Federal control?

Mr. WRIGHT. They were not.

Mr. WEBSTER. And under the terms of the act had no claim for the guaranty?

Mr. WRIGHT. Perfectly true.

Mr. GRAHAM. Judge Webster, may I interrupt you a moment? I find on page 6 of the former hearings, the second paragraph reads like this—without reading it down in toto:

"The guaranties provided in section 209"—I suppose that is six months—"of the transportation act were available only to such carriers as filed with the commission on or before March 15 an acceptance of all the provisions of the section. The Baltimore Steam Packet Co."—then he goes on and names a lot of them, the Merchants & Miners' Transportation Co. and several others—"filed with us acceptances of the provisions of section 209 also, but I don't find in there the Clyde Line or the Mallory Line."

Mr. WEBSTER. The reason for that is that the Clyde Line and the Mallory Line, both of them, had been relinquished to their owners long prior to the termination of Federal control, and the provision of the guaranty relates only to such carriers as are under Federal control at the time of the termination of Federal control. So under the terms of the act they had no rights under it.

Mr. GRAHAM. I think that is right, but technically that was true of the Chesapeake Co., too, wasn't it?

Mr. WEBSTER. No; that was not true of the Chesapeake.

Mr. WRIGHT. That was continuously under Federal control. It went back with the railroad.

Mr. WEBSTER. Following up my line of questions, Mr. Wright, I understood you a moment ago to indicate that it was your idea that

the Clyde Line and the Mallory Line occupied precisely the same situation as a matter of morals and equity that the Merchants & Miners' Co. occupied?

Mr. WRIGHT. Why, certainly.

Mr. WEBSTER. Well, that would involve extending the principle of the original transportation act, would it not?

Mr. WRIGHT. I maintained from the beginning that the principle is almost beyond understanding. Here was a company that was operating at a loss at the beginning of Federal control, due to general national conditions—international conditions—was taken over, compensated by the Government for 26 months and then turned back to the owners; another company in the same territory, operating at a loss, and the director general elected not to take it for any reason, it carries its own losses for all of the period or part of the period, as the Clyde and Mallory and Southern did; then Congress in the effort to sustain service till they can get on their feet, votes certain carriers money for six months; how can you differentiate?

Mr. WEBSTER. I am not undertaking to say that there isn't merit in your position, but that position was not the one that Congress adopted.

Mr. WRIGHT. I admit that, sir.

Mr. WEBSTER. Now, the purpose of this bill that we have under consideration at this time is to include within the principle of the transportation act a company which comes within the principle but which by inadvertence was not included within it because of the language employed; whereas your suggestion that these other companies, the Clyde and Mallory and other similar lines, should be included in the act would involve a broadening of the fundamental principle of the transportation act in that respect, would it not?

Mr. WRIGHT. Yes, sir; and possibly to the point of prohibiting any appropriation at all; but I don't think that it will. I think that the whole amount, while large to these companies, is relatively so small compared with one settlement with the railroads that the Congress can state them all the same way, regardless of how they qualify as between partly under Federal control or entirely under Federal control or not under Federal control. There are so few of them. There are none on the Pacific coast; practically one large one and a few very small ones on the Great Lakes; perhaps five or six on the Atlantic coast. What impresses me is the fact that right alongside of them and competing with them are railroad-owned lines that have gotten this payment without any question simply because of different legal relations or corporate relations, as I have stated.

Mr. WEBSTER. I see your idea quite clearly and, as I have already said, I believe it has a great deal of force, but the fact remains that in order for the Merchants' & Miners' Co. to gain the benefit that is contemplated by the present act there will have to be established ultimately the fact that at the time of the termination of Federal control that company was, as a matter of law, under Federal control.

Mr. WRIGHT. Right here I would like to say——

Mr. WEBSTER (interposing). That is a fact, isn't it, Mr. Wright?

Mr. WRIGHT. Which?

Mr. WEBSTER. What I have just stated.

Mr. WRIGHT. No, sir.

Mr. WEBSTER. That in order for the Merchants' & Miners' Co. to gain any benefits under this act we are now considering it will be necessary for it to be ultimately determined that at the time of the termination of Federal control that company, as a matter of law, was under Federal control?

Mr. WRIGHT. Mr. Webster, I think it would be very much better to change the language of the act to fit the facts than to do the other thing.

Mr. WEBSTER. But that does not answer my question, Mr. Wright.

Mr. WRIGHT. I am trying to answer it, sir.

Mr. WEBSTER. Well, my question is this: I say that under the terms of the act we are now considering—the bill we are now considering—before the Merchants' & Miners' Co. can obtain the benefit contemplated by it, it will be necessary for it to be determined ultimately that the Merchants' & Miners' Co. at the time of the termination of Federal control was under Federal control?

Mr. WRIGHT. I admit that.

Mr. WEBSTER. So that unless we are contemplating broadening the principle of the original transportation act and no longer insisting upon the guaranty being confined to those concerns that were under Federal control at the time of the termination of Federal control, we can eliminate from consideration the Clyde Line and the Mallory Line. Is that correct?

Mr. WRIGHT. You can, if you are going to stick right to that principle.

Mr. MERRITT. Just one question there, Mr. Wright. Isn't it true that under the transportation act there were included railway carriers which were not under Federal control and had no right to be under Federal control?

Mr. WEBSTER. That is true as to some of the short lines; but that does not interfere with the correctness of what I have been stating in its relation to this transaction.

Mr. MERRITT. I know. I meant that it seemed to me that broadening the principle that applies to railroads under the act now would extend that same principle over other carriers.

Mr. WEBSTER. It would be broadening the principle of the act in so far as the act relates to carriers of this sort.

Mr. WRIGHT. Mr. Merritt has stated just what I was going to say in answer to you.

Mr. WEBSTER. I have that in mind, and I am not disposed to contend at all that it would not have been equitable to have applied that same principle to carriers circumstanced just as these are, but the fact remains that Congress did not do it. Now, the bill that Mr. Sanders has introduced does not contemplate an amendment in the principle of the bill in its relation to this carrier; it merely attempts to change the language of the bill so as to bring this company within the principle of the act, upon the theory that it was left out merely by inadvertence; that if it had been in the mind of Congress at the time language would have been employed—broader language would have been employed, and it would have been included without any departure from the principle of the bill.

Mr. WRIGHT. That brings me to the report of the committee dated about March 3 or 4, which makes a record with which the Railroad Administration never can agree. It is not a statement of the situation as it exists. It states that the Merchants & Miners' was under Federal control and was being operated for the account and risk of the Railroad Administration, exactly what the Directors General of Railroads, all three of them, have disclaimed. We have a very large unsettled claim, which may have to go to the Court of Claims, and I feel sure that the Government's position will be prejudiced there if the Merchants & Miners' Co. offers as evidence the report of this honorable body. It does not state the situation correctly.

Mr. WEBSTER. Now, there is one other question that I want to ask. The Merchants & Miners' Co. at the time Director General McAdoo undertook to compel them to receive their roads back—was that under the provisions of the law of July 1, 1918, under which act that could only be accomplished by agreement?

Mr. WRIGHT. Yes, sir.

Mr. WEBSTER. And they are still insisting upon that contention?

Mr. WRIGHT. They are, but they are to-day consistent. At that time, and shortly before that time, and for a peroid of six or eight months, they had insisted that that law did not apply to their company in its compensation, but it did apply—they changed their position on the advice, I think, of Senator Hoke Smith and several others, and then claimed that the railway control act did apply and that they were entitled to be kept until the railroads went back.

Mr. WEBSTER. Or until they agreed to accept their lines back?

Mr. WRIGHT. Yes, sir.

Mr. WEBSTER. That clears me up on that.

Now, just one other matter. With respect to your views concerning the Chesapeake Co., I understand your position to be substantially this: That the Chesapeake Co. is an independent concern standing upon its own feet and exercising its own rights, and that its officers and board of directors undertook, as nearly as they could, to accept the provisions of the guarantee—that is, they filed an election to take the benefit of the provision—and the mere fact that a portion of its stock, even though it be two-thirds, was owned by the Southern Railway Co., while the remaining one-third was owned by another railway company, does not alter its situation as a matter of law? Is that correct?

Mr. WRIGHT. That is perfectly correct.

Mr. WEBSTER. And that they ought to be included in the bill, because, speaking through their constituted authorities, they have done all that they could to come in, and that the incidental fact of ownership of stock does not alter the situation at all.

Mr. WRIGHT. It takes us clear back to the decisions in the American Tobacco Co. case and the Standard Oil case. There is a legal separation between the Southern Railway and the Chesapeake Line. The rule of reason applies. I don't see how we can bridge over that gap at all.

Mr. HOCH. Right on that point, Judge Webster, if, as a matter of fact, that does not change the situation as a matter of law, then it is solely a question for the courts as to whether that was a legal and valid election to take under the guarantee, isn't it? Why do they

need to come to Congress? If, as a matter of law, they had a perfect right, these officers, to elect, and did elect, then under the law, as a matter of judicial determination, they can get the guarantee without coming to Congress, can't they?

Mr. WRIGHT. I admit the force of that, but it also seems to me—and, as I have stated before, I hold no brief for that or any other company—they could not litigate this claim for the amount. Their rights are extinguished if they have to go to the Court of Claims. The company is too small; the amount is too small. The commission's position should be corrected on that. The easiest way to correct it, I submit, unless you are getting into matters that I am ignorant of inside the Congress, is to cover it in the language of this bill. I hope you will do that.

Mr. HOCH. I want to ask one more question suggested by that line of reasoning. I understand, then, your view is that any company, no matter whether under Federal control or not, should be given relief if it can be shown as a matter of fact that they suffered losses which were occasioned by Federal control? Will you state the principle of that broadly?

Mr. WRIGHT. No; not by Federal control.

Mr. HOCH. That would apply with reference to some of these concerns that never were taken over?

Mr. WRIGHT. You are absolutely correct, except as to those words, "sustained losses by reason of Federal control." I do not see the pertinency of that.

Mr. HOCH. Perhaps I did not state it quite clearly. I am trying to get your statement of the principle involved, the equity involved. You have stated that some of these concerns, these companies, never were taken over, but they had to compete in the matter of wages and the matter of material and all that, and by virtue of certain circumstances for which they were not responsible they did suffer loss, and therefore you think as a matter of equity they should be given relief whether they were under Federal control or not?

Mr. WRIGHT. They should; yes, sir.

Mr. HOCH. If we are going to follow out that principle as a matter of governmental policy, wouldn't that carry us a good ways in giving relief to concerns that suffered by virtue of the general war conditions that were upon us?

Mr. WRIGHT. I can not see how this committee could entertain that proposition at all without a list of the companies and their standard return before them, so that you could know what you were getting into. You don't want to go to infinity with this, and you could not get such a bill through if you did indorse it in the committee.

Mr. HOCH. It is important, to my mind, because in order to proceed at all I think we need to be upon very sound grounds fundamentally. I do not at the moment distinguish in principle between that part of a case, relating to transportation companies, and the sort of case relating to business generally in the country that suffered very definitely by virtue of war conditions that were forced upon them, and if you argue that the Government has a right to give relief in one case, why not in the other case?

Mr. WRIGHT. I can now see why you are putting in there, "caused by Federal control." I see it now.

Mr. HOCH. I am trying to limit it.

Mr. WRIGHT. I see it now; yes, sir.

The CHAIRMAN. Have you any further answer?

Mr. WRIGHT. The number of companies, as I said, was very small. I will start with New England, the Eastern Steamship Co., whose loss must have been quite small, because at the time they had the *Massachusetts* and the *Bunker Hill*, two crack boats, in overseas service. So that their net loss would probably not be a burden on this company.

There is one small company operating between New York and Providence, the Colonial Transportation Co., that is absolutely tied up to the destinies of the Fall River Line and the New Haven Railroad.

The line between New York and Norfolk changed hands right at the end of Federal control, so it is not a claimant and never will be.

You have one line on Chesapeake Bay, the Chesapeake Steamship Co.

You have the Merchants' & Miners' Steamship Co. between Chesapeake Bay and New England.

And you have the Clyde, Mallory, and Southern. Now, that is all, I believe, that could qualify under the broadest language that you could possibly under any persuasion put into the bill. The Great Lakes Transportation Co. might possibly make a claim, but I doubt whether they woul want to, because they probably did not lose much money.

The San Francisco & Portland Steamship Co. is the only one on the Pacific coast that could qualify, and they have already been taken care of by this ruling of the Interstate Commerce Commission.

So, after all, it is not a large proposition.

Mr. SWEET. I understand, Mr. Wright, that your contention is predicated upon the proposition of the service rendered during the period of Federal control?

Mr. WRIGHT. Yes, sir.

Mr. SWEET. And, as you view it, from the standpoint of equity, it does not matter whether the railroad was taken over by the Government or was not taken over by the Government, or the steamship line was taken over by the Government or not taken over by the Government; that you believe that the railroad or the steamship company should be compensated for the service rendered during that period?

Mr. WRIGHT. Yes, sir; if they rendered it, if they kept up the service and did not cut it.

Mr. SWEET. And if they suffered loss during that period they should be compensated for it in accordance with what might be termed the equities of the case?

Mr. WRIGHT. In part: yes. I don't think they should be held harmless from the war effects at all: but I think that they could be consistently—the Congress could help them to some extent, and I really can not differentiate between the lines which were supported by the Government for 26 months and those which were supported for 12 months or longer, as in some of the other cases.

Mr. SWEET. Do you believe the bill as worded here takes care of the proposition along that line, or would you suggesc a rewording of it?

Mr. WRIGHT. I really need to study that bill a little bit before I can answer that question intelligently. I am thinking more of the principle and the scope of the bill rather than the language which you want me to help provide. But I do feel that the service should be the controlling idea. Where the line absolutely stuck to their patrons and took care of them, regardless of the consequences, they should be taken care of. That is the one "sweetener" with the Merchants' & Miners' situation, that they did perform their service.

Mr. MAPES. Early in the evening, Mr. Wright, you, if I understood you correctly, named several companies in the same class with the Chesapeake Co.—for instance, the New England Co., the old Dominion Line——

Mr. WRIGHT (interposing). The Baltimore Steam Packet Co.

Mr. MAPES. What is the difference, as far as this bill and the guaranty under section 209 of the act turning the railroads back are concerned, between the Chesapeake and those other companies?

Mr. WRIGHT. I can not see any difference at all in any of the acts.

Mr. MAPES. I am not asking you the difference in principle, but, as a matter of fact, what is the difference? Have they been given their guaranty?

Mr. WRIGHT. You mean what has occurred?

Mr. MAPES. Yes.

Mr. WRIGHT. The Interstate Commerce Commission ruled that all of the lines under railway control should get the guaranty. They excepted the Chesapeake Steamship Co. because its principal stockholder elected not to take the guaranty. The difference on the Chesapeake Bay is that one company, owned by the Seaboard Air Line, has been paid or is settling up; and the other, owned by the Southern Railway and the Atlantic Coast Line, running alongside of it, got nothing.

Mr. MAPES. Is this the difference, that the Chesapeake Co. is a separate entity from the Southern Railway Co. and the other companies are not?

Mr. WRIGHT. Yes, sir; the Seaboard Air Line Railroad owns the Baltimore Steam Packet Co., the steamboat company. They own the stock of it. The two rival lines to the seaboard, which are the Coast Line and the Southern, own the Chesapeake Steamship Co.

Mr. MAPES. Is the difference simply that in the one case one railroad company owns all the stock, and in the other case two railroad companies own the stock?

Mr. WRIGHT. Yes, sir.

Mr. MAPES. In each case they are independent entities from the railroad company?

Mr. WRIGHT. Absolutely, and, as I understand it, for many years they have received freight from all connections tendered to them without reference to the railroads that owned them.

Mr. MAPES. And have these other companies actually received the guaranties?

Mr. WRIGHT. Yes, sir; the Baltimore Steam Packet Co. received the guaranty. The trouble with the Chesapeake Line was that the one-third owner of its stock, the Atlantic Coast Line Railroad, received the guaranty, but the two-thirds owner, the Southern Railway, declined the guaranty, and the commission says that is controlling, the subsidiary of the Southern Railway—part subsidiary.

Mr. MAPES. Do you know the make-up of the board of directors of the Chesapeake Line, as to whether it is the same as the Southern Railway Co.?

Mr. WRIGHT. I do not, sir; but the president and counsel are right behind me, and if you would allow me to put that into the record, I would undertake to get you the answer.

Mr. MAPES. I am willing, but I presume they will come on later, and we can get it from them.

Now, going back to the Merchants & Miners' Transportation Co., was there any special reason that you know of why the management of the Merchants & Miners' Transportation Co. did not want to come out from under Federal control, while the other three companies appeared to be anxious to?

Mr. WRIGHT. Yes, sir; the reason was the same reason that affects the standard returns of those companies in the test period, 1915, 1916, and 1917. At the beginning of Federal control of the railways, and three months before the Merchants & Miners was taken over by this special proclamation, the Merchants & Miners was trying to cancel through the Interstate Commerce Commission a long list of confiscatory rates. It was subject, except in its Florida line from Baltimore to Philadelphia, to the sharpest competition that there is, both by rail and by water, and in the effort to get cargo they had gone back as far as North Adams, Mass., and brought freight to Boston destined to the city of Chicago. They would haul it from Boston down to Newport News and give it to the Chesapeake & Ohio Railroad, and it really had to get well over into West Virginia before it was as near to Chicago as it was before it started.

It traveled perhaps a thousand miles before it got as near Chicago as when it was put on the first car at North Adams. So that as terminal costs rose—and that was our great trouble, the long-shore expenses—the Merchants & Miners' proportion was entirely eaten up, and there was no compensation there for the haul of 575 miles from Boston to Newport News, and that situation obtained all over New England, clear up into Maine and Vermont. They had been gathering freight by that expensive process at Boston in order to fill up the ship, taking it to the far West, performing a service a thousand miles longer, perhaps, than the short-line rail service, and doing it at a rate under the rail rates. Now, as costs rose—and those rates were all fixed through 1916 and 1917; practically fixed; there was very little advance in them—they were wiped out, and they were trying in January, 1918, to have the Interstate Commerce Commission relieve them of all these rates that were confiscatory, and let them live on the port-to-port business, or practically that, which was abundant at that time and which was compensatory.

Mr. MAPES. They were trying to get the Railroad Administration to do something that they did not do themselves?

Mr. WRIGHT. They were trying to get the Interstate Commerce Commission to do it. The first thing the Railroad Administration did was to cut off that wasteful service and send the freight direct. The Merchants & Miners' had a lot of that sort of thing, the growth of years. It was not unintelligent work at the time, because the costs had not risen and they had a margin in it, but after a while, as

the costs went up, there was nothing in that, no revenue in it, and they were trying to get rid of that. They were losing money all through 1917.

The Clyde and Mallory Cos. were not subject to that. Neither was the Southern Pacific. You can understand that on a haul from New York to the Gulf of Mexico, on a long rate like that, you have more money left after deducting your terminal expenses, but on a short haul like from Norfolk to Providence or Norfolk to Boston you haven't anything left.

Between Norfolk and New York was our worst loss, for the same reason. Our total rate would not pay the handling charges at the two terminals, and that was the principal trouble with the Merchants & Miners'.

Mr. MAPES. It was not so much a question of the difference in judgment of the management of these different companies as it was the different situation that they were in?

Mr. WRIGHT. Yes, sir; and I don't believe we all realize clearly yet just what happened after the war on the other side had been going three month. The costs went up. Everything got out of control.

Mr. MAPES. You predicated some statement which you made, if I understood you correctly, upon the statement that if the company was operating at a loss at the beginning of Federal control—I don't recall just what that was.

Mr. WRIGHT. Yes.

Mr. MAPES. Were any of these companies operating at a loss when they were taken over?

Mr. WRIGHT. No, sir. The Merchants & Miners' and the Old Dominion were perhaps operating at some loss, but the Clyde and Mallory distinctly were not, and the Southern. And I will explain why.

Mr. MAPES. You think perhaps the Merchants & Miners' were operating at a loss at the time?

Mr. WRIGHT. Yes, sir; their records, their appeals to the Interstate Commerce Commission three months before they were taken over, gave their figures and showed that they were in very bad shape.

Mr. MAPES. Have the Mallory and the Clyde and the Southern companies accepted the compensation provided for under the Esch-Cummins law?

Mr. WRIGHT. No, sir; they did not. I don't suppose they paid any attention to it, or if they did, they felt—they probably felt they could not qualify, because they had voluntarily——

Mr. MAPES (interposing). I mean from the time they went under Federal control.

Mr. WRIGHT. During Federal control?

Mr. MAPES. Yes.

Mr. WRIGHT. I beg your pardon. They made us a great deal of trouble asking for the Shipping Board rates. I think their total claim was between seven and eight million dollars. We settled for a good deal less than half that.

Mr. MAPES. Now, has the Merchants & Miners' made any negotiations with the Railroad Administration looking toward a settlement, during the same period that is covered by the time that the Clyde and the Mallory and the Southern companies were under Federal control?

Mr. WRIGHT. Oh, yes; we have had a lot of negotiation. Their counsel is sitting behind me, and he has made us a great deal of trouble. He calls it "negotiation," but the figures are so high that we can't see it.

Mr. MAPES. As I understand it, he is insisting upon compensation clear up to the time that the railroads generally were given back?

Mr. WRIGHT. We are morally sure that the Court of Claims will not force the Government to pay for that period, and he is just as sure that it will.

The CHAIRMAN. Are there any other questions to be asked Mr. Wright?

Mr. NEWTON. I don't know whether this is the right question to ask Mr. Wright—possibly some one else may want to answer it—but I am wondering whether the Merchants & Miners' Co. at the time when there were most extensive hearings held in connection with the contemplated passage of the transportation act, if they were represented and appeared before the committee, and if not, why not, and why section 209, for example, when it was being gone over was not made broad enough to take in this particular company? Do you know why they did not appear?

Mr. WRIGHT. I really do not, sir. I was not following the legislation. I think the counsel for the American Railway Association, who is sitting here, could perhaps answer that question.

Mr. NEWTON. Is he to appear later?

The CHAIRMAN. We expect to have him later. He can answer that then, I think.

Are there any other questions to ask Mr. Wright?

Mr. SANDERS. I have just two or three, Mr. Chairman.

By the terms of the original section 209 we defined a carrier as being a carrier by railroad, or partly by railroad and partly by water: whose railroad or system of transportation is under Federal control. So by the terms of the original act there were two classes of transportation systems that were embraced, the carrier by railroad, and then the carrier partly by railroad and partly by water; all carriers by railroad and all carriers partly by railroad and partly by water had the right to elect to come within the terms of the guaranty provisions, did they not?

Mr. WRIGHT. They did.

Mr. SANDERS. The Merchants & Miners' Transportation Co. is neither a carrier by railroad nor a carrier partly by railroad and partly by water, but is an independent water carrier. That is true, is it not?

Mr. WRIGHT. Except that it is a carrier of traffic partly by rail and partly by water.

Mr. SANDERS. But in so far as its carrying is concerned that carrier is neither a railroad nor is it a carrier partly by railroad and partly by water.

Mr. WRIGHT. Correct.

Mr. SANDERS. Therefore it is not within the terms of this act. There is no way under the present law, and there never has been any way under the present law, by which the Merchants & Miners' Transportation Co. could claim under the guarantee provisions either by itself or have the claim made by some one else. Is that true?

Mr. WRIGHT. That is true.

Mr. SANDERS. It was entirely left out, and is this not the only one that was left out in that respect?

Mr. WRIGHT. Speaking technically in that respect; yes, sir, the only one.

Mr. SANDERS. Every other water carrier which formed a system with a water carrier and a railroad carrier could be taken care of if the railroad carrier owning the controlling stock was willing to take the terms of the guarantee provisions for the railroad and for the water carrier as one system of transportation?

Mr. WRIGHT. That is true.

Mr. SANDERS. And the Southern Railway Co. controlled the Chesapeake Steamship Co.?

Mr. WRIGHT. By stock ownership.

Mr. SANDERS. So it could dictate—it had the right under the terms of the act, as it has been construed by the Interstate Commerce Commission, to elect for itself and its subsidiary water carrier to take the whole system together and come under the terms of the guarantee provisions, did it not?

Mr. WRIGHT. It had that right. It did not exercise it.

Mr. SANDERS. It had that right. Of course, how the control of the water carried passed to the railroad company we are not concerned with, are we?

Mr. WRIGHT. We certainly are not.

Mr. SANDERS. But, as a matter of fact, it was absolutely controlled, because two-thirds stock ownership means control, and since it was controlled by the railroad company the railroad company dictated practically the terms of the contract between the railroad carrier on the one hand and the water carrier on the other, did it not?

Mr. WRIGHT. I do not go that far. It did not express itself legally.

Mr. SANDERS. No.

Mr. WRIGHT. It made no expression.

Mr. SANDERS. I mean with reference to freight carrying; its contracts for carrying freight and all other contracts between the rail carrier and the water carrier, this controlling railroad company had a good deal to do with the terms of those contracts?

Mr. WRIGHT. No; I can not see it, Mr. Sanders. It could have done it. It could absolutely have dominated everyone, but whether it did or not I can not answer. It did not express itself in this case.

Mr. SANDERS. Well, it had it in its power to control the contract with reference to the division of freight, and all that sort of thing.

Mr. WRIGHT. It had the authority.

Mr. SANDERS. I am just trying to get at the reason that Congress has for originally requiring, when an election was made, that it elect for the entire system so far as water and rail is concerned. If the Southern Co. was given the permission to elect for itself to stay out of the guaranty provisions and get all it may and at the same time to have the water carrier which it controlled through its officers to elect to stay within the terms of the guaranty during the six months' period, might they not so have manipulated their contracts as to put the Government at a disadvantage?

Mr. WRIGHT. No, sir; I don't think they could, and I certainly have no reason to argue the case for the Southern Railway. The

divisions that you refer to, their traffic agreements, while it may be argued that they could be handled exactly as the controlling owner of the steamship company dictated, as a matter of fact they can not be, because the water carrier gets the best divisions it can by barter with the rail carriers, and the possibilities are that the divisions have been established a very long time and can not be very well changed. I do not go with you that far; I can not see the opportunity for manipulation, either. And I would like to say with respect to one very important phase of this guaranty, which is frequently argued, that a company that did not elect to take the guaranty, and then later on wanted to take it, is disqualified because it was trying to eat its cake and have it. The record of performance of these steamship lines during the last year of Federal control and up to now did not give anybody a chance to speculate to that extent. They were facing a known loss.

Mr. SANDERS. So nobody made much of a sacrifice when they elected to come under the guaranty.

Mr. WRIGHT. It was unlike a coal railroad that I know of that would not take the guaranty—or, rather, it did take the guaranty and then found it was going to make much more, and then revoked the guaranty by action of the board, and got that in a few days too late. so now they are paying back to the Government, or will have to.

The CHAIRMAN. Mr. Wright, in order that a certain phase of this matter may be put into the record in clear form, I would like to have you verify what I am about to read, which refers to the hearing on H. R. 15963, February 24, 1921:

In making advances the Interstate Commerce Commission has therefore only recognized the claims of water carriers when made by the controlling railroad company.

That is, as a principle. That we can all agree to, can we not?

Mr. WRIGHT. We can.

The CHAIRMAN (reading):

The 15 carriers, with the method of presenting claims, follow:

Name of water carrier.	Claim presented by—	I. C. C. docket.
Baltimore Steam Packet Co	Seaboard Air Line	F. D. 298.
Central Vermont Transportation Co	Central Vermont Ry	F. D. 351.
Chesapeake Steamship Co		
Grand Trunk-Michigan Central Ferry	Grand Trunk Ry	F. D. 498.
Merchants & Miners' Transportation Co		
Natchez & Louisiana Ry. & Transportation Co	Missouri Pacific Ry	F. D. 676.
New Bedford M. V. & N. S. Co	New York, New Haven & Hartford R. R.	F. D. 682.
New England Steamship Co	do	F. D. 354.
Ocean Steamship Co	Central R. R. of Georgia	F. D. 711.
Wiggins Ferry Co	Terminal R. R. of St. Louis	F. D. 893.
Hartford & New York Transportation Co	New York, New Haven & Hartford R. R.	F. D. 578.
Philadelphia & Camden Ferry Co	Pennsylvania R. R	F. D. 738.
Champlain Transportation Co	Delaware & Hudson Co	F. D. 424.
Lake George Steamboat Co	do	F. D. 424.
Louisiana & Mississippi R. R. & Transfer Co	Alabama & Vicksburg	F. D. 593.

The 13 carriers by water controlled by railroad companies therefore come under the act as it stands.

We can agree up to that point?

Mr. WRIGHT. We can.

The CHAIRMAN (reading).

The two carriers by water now excluded are the Chesapeake Steamship Co. and the Merchants & Miners Transportation Co.

Are there any others?

Mr. WRIGHT. There are.

The CHAIRMAN. Will you state those in order that they may be hitched on to this list as it appears in the record?

Mr. WRIGHT. Mr. Chairman, let me understand fully. Carriers that are technically within the language of the act were carriers which I feel are entitled to consideration.

The CHAIRMAN. If you can differentiate, please state.

Mr. WRIGHT. All right. I think these last two are in the right order; that there is so little difference between the Chesapeake Steamship Co. and the others which have been passed here as qualifying that it should be the first on the second list. The Merchants & Miners is properly next. They have the greatest claim.

The Clyde Steamship Co. have a call for third, for the reason that it's operations are entirely between Boston, New York, Charleston, and Jacksonville, with the exception of a little side line that runs from New York to Santo Domingo, which should be excluded as being off continental North America. But it made a loss and rendered a very necessary service on this coast.

The fourth I would put in the Mallory Steamship Co., which runs from New York to Brunswick, Ga., and from New York to Galveston, stopping at Key West. That service is essential to this country. Both the Clyde and Mallory, as has been stated several times, were under Federal control and were relinquished and consented to the relinquishment. I am quite sure that the Government saved two or three million dollars of upkeep, without regard to the prospective operating losses, by the action of those companies; that is, the burden fell on their treasuries instead of on our Treasury. I think they have been punished enough. They kept going and gave full service.

Next would be the Eastern Steamship Co., which probably will not be interested in these proceedings. It probably hasn't any claim—I mean did not make much loss—but they should be accorded the opportunity to file their claim. You are personally familiar with the service they performed. It is an essential service.

Last is the Colonial Transportation Co., on Long Island Sound, which is a very small company. I don't know whether it lost or gained.

The Southern Steamship Co., between Philadelphia and Galveston, should also be included.

I don't know of any others. We probably could find half a dozen small lines, but the entire claim in the aggregate would not be more than a couple of hundred thousand dollars, and the chances are that they did not have and would not have any claim.

Mr. DENISON. Then, if I understand your position, Mr. Wright, you base your position with reference to the way these companies ought to be paid entirely upon the service they rendered, and without regard to the action of their managing corporate authorities?

Mr. WRIGHT. I certainly do; and without regarding their names.

Mr. DENISON. Now, the theory of section 209 of the Transportation Act was that this guaranty should be based partly upon a contractual relation between the Government and the transportation company; that is, the guaranties should go to those companies and those companies only that signed an acceptance, so that in case they earned more than the standard return the Government should get the benefit.

Mr. WRIGHT. Yes, sir.

Mr. DENISON. You don't regard that as a proper part of that legislation, do you?

Mr. WRIGHT. I do, during Federal control.

Mr. DENISON. You are disregarding it, aren't you, in your statement?

Mr. WRIGHT. I am not disregarding it during Federal control.

Mr. DENISON. You don't think that the fact that they had a contractual relation, which whatever it was in the statute, the original control act——

Mr. WRIGHT (interposing). It didn't work out that way at all, Mr. Denison. Just think of the different kinds of contractual relations we had.

Mr. DENISON. I had reference to the contractual relationship growing out of a written acceptance and agreement, an agreement to surrender its excess earnings over the standard return if the Government would agree to guarantee the deficit.

Mr. WRIGHT. I recognize the force of that, but I call your attention to this: A lot of these companies did not know—they thought they had been left entirely out of the act—did not know they could file an acceptance. This was a rail act, unintentionally, wasn't it?

Mr. DENISON. Yes.

Mr. WRIGHT. It gave every form of relief to every carrier or rail transportation enterprise, whether under Federal control or not.

Mr. DENISON. Provided they signed the acceptance; otherwise they didn't get the guaranty, whether under Federal control or not.

Mr. WRIGHT. Yes, sir: but obviously it was a rail proposition. Now, here comes along the water contingent, and they work out of all this a huge loss during that period, and nobody could have possibly and intentionally refused to sign or withhold their acceptance in he hope of making more money by that process. It was not possible. There isn't a ship man along this coast that can show that he made any money in that period. Nobody hoped to. So, it was not a speculation. It was not in the business; you couldn't make money out of this business at that time. Now, I don't think that their failure to meet that requirement in these specific circumstances ought to be considered.

I know very well that if this whole proposition amounted to a large amount of money, that you gentlemen could not get it through the Congress, and there would be nothing in my talking this way, but I don't believe that the amount is large, or relatively large.

Mr. GRAHAM. As a practical question, under the Esch-Cummins Act a railroad carrier that elected to take this guaranty can receive it, if the carrier was under Federal control at the time Federal control was relinquished. That is true, isn't it?

Mr. WRIGHT. Yes, sir.

Mr. GRAHAM. A carrier partly by railroad and partly by water that was under control of the Government at the termination of Federal control can take it if he elects to take it. That is true, isn't it?

Mr. WRIGHT. Yes, sir.

Mr. GRAHAM. Now, is there any reason that you know why a water carrier operating by itself, that was under Federal control at the time of the termination of Federal control and that elected to take it, should not have it?

Mr. WRIGHT. I can not conceive of any reason.

Mr. GRAHAM. That is all this bill is, Mr. Wright. It proposes, as I understand it—and if I am wrong, Mr. Sanders will correct me—it proposes to insert a carrier that was operating as a private company, a water carrier, not under the control of anybody else, into the act.

Mr. WRIGHT. Conditioned on its being under Federal control.

Mr. GRAHAM. At the time Federal control terminated.

Mr. WRIGHT. Which you understand the Railroad Administration denies in the case of the Merchants & Miners'.

Mr. GRAHAM. I understand, but now let us lay that aside; forget that.

If any water carrier that was a separate company by itself was under Federal control at the time Federal control terminated, it ought to have the guaranty if it elected to take it, ought it not?

Mr. WRIGHT. Unquestionably.

Mr. GRAHAM. Then it is a good bill, isn't it?

Mr. WRIGHT. It is for the Merchants & Miners', but for the Chesapeake Co. it needs amendment.

Mr. GRAHAM. The question, Mr. Wright, of whether the Merchants & Miners' Transportation Co. or the Chesapeake Co. were under the control of the Government at the time of the termination of Federal control is a question to be hereafter settled, isn't it? Even if this act passes?

Mr. WRIGHT. In the language as it is now?

Mr. GRAHAM. Yes.

Mr. WRIGHT. Yes, sir.

Mr. GRAHAM. And with that I take it this committee is not especially concerned, is it?

Mr. WRIGHT. I think it is.

Mr. GRAHAM. Have I stated that right, Mr. Sanders?

Mr. SANDERS. Yes.

Mr. MAPES. It being admitted that the Merchants & Miners' Co. is the only one that can possibly come under the provisions of this bill, you hold that it would be practically a legislative finding that that company was under Federal control when the railroads generally were turned back?

Mr. WRIGHT. That is true.

Mr. MAPES. Is that your position?

Mr. WRIGHT. Yes, sir.

Mr. GRAHAM. Also, as I understand it, Mr. Wright, you are looking at it more from the standpoint of what you consider to be the justice of the matter?

Mr. WRIGHT. I am.

Mr. GRAHAM. On broad general grounds. But I am trying now to get my mind focused on the bill of Mr. Sanders which is before

the committee, and which seems to me to be simply a bill to put into the law what manifestly ought to have been there in the first place.

Mr. MERRITT (interposing). Or, as Mr. Wright suggests, to amend it.

Mr. WRIGHT. And I do that in ignorance of the difficulties which that may bring to the committee. I don't know what the situation is.

Mr. GRAHAM. I don't know what Mr. Sanders' intention is about the bill, but I take it that the bill here before us is the bill that he favors.

Mr. SANDERS. I drew this bill for the sole purpose of bringing within the terms of the act a carrier which should have been within the terms of the act under the principle of the act originally, and I intended it to be nothing but that. This other question of whether a water carrier that is not under Federal control should be brought in by different legislation is a very interesting one, but I don't think has anything materially to do with the purposes of this bill. I am quite interested in what Mr. Wright has said, and I am personally under great obligations to him for the suggestions he has given to me in the preparation of the bill. He has been very helpful.

Mr. WRIGHT. The Railroad Administration has quite a large debt to the Merchants & Miners' which we do not want prejudiced by either a bill or any of the reports of this committee. We want to make a fair trade with them. That is aside and apart from my desire to see them get the benefit of this guaranty, to which I think they are justly entitled, just as much as their competing rail carriers were entitled to it.

Mr. GRAHAM. Mr. Wright, just along that line. I do not want to ask you anything which might not properly go into the record, but if this committee were to vote on this bill, and perhaps if it should pass the House, just how would it embarrass you in your dealings with this company?

Mr. WRIGHT. Well, the bill will not, but you have got a record here.

The CHAIRMAN. He has reference to the report on this bill.

Mr. WRIGHT. A report on this bill which misstates our position. If we were to settle in the next three weeks with the Merchants & Miners Transportation Co. I would not say anything about your record, but we are right in the period of negotiation. There is being asked a good deal more money than we think the Government should pay, and in all our desire to help them get the guaranty through this committee we do not wish to injure that trade. Your bill is not going to hurt us at all, but the report dated about March 3 or 4 makes a record which we would not like to appear in the Court of Claims as the official expression of this committee.

The CHAIRMAN. Are there other questions to be asked Mr. Wright? Have you anything more to add, Mr. Wright?

Mr. WRIGHT. I certainly have not.

The CHAIRMAN. We are greatly obliged to you.

Mr. WRIGHT. I thank you all for your courtesy.

The CHAIRMAN. We have now arrived at the place where we can ask those who are in favor of this bill to present themselves and be heard. It might be in order for the Merchants & Miners Transporta-

tion Co., it seems to me, to be the first object of consideration, in the first instance, to be represented by somebody.

Mr. Kent, do you qualify for that duty?

Mr. KENT. Yes; Mr. Chairman.

STATEMENT OF MR. OTIS BEALL KENT, GENERAL SOLICITOR FOR THE MERCHANTS & MINERS' TRANSPORTATION CO., WASHINGTON, D. C.

Mr. KENT. Mr. Chairman and gentlemen of the committee, it is my purpose not to repeat any portion of my former statement, except in so far as may be inevitable; but there are a few points which I should like to clarify, and which I will consider in order as they may suggest themselves.

Mr. Wright has referred to the sale of several of the company's vessels at rather fabulous returns. I might suggest to the committee that all those proceeds were subject to corresponding repayments to the Government in income taxes, so that our net return did not leave us very much ahead of the game.

There is some confusion, I think, in the minds of some members of the committee, as to the relation between the Federal control act and the transportation act, the President's proclamation and the orders of the director general. There is, of course, no question that the proclamation by virtue of which the railroads were taken over was issued in pursuance of the national defense act. The railroads having been taken over, it became apparent that these essential links in the general system had been omitted; and, in furtherance of the common purpose, the President issued his supplemental proclamation taking over the four independent water lines referred to in Mr. Wright's testimony.

Now, it is self-evident that the same power that took over the railroads was exercised in taking over the water lines, else their taking was an ultra-vires act on the part of the President. In the latter event, the claim of the Merchants & Miners' Transportation Co. would resolve itself into one not of compensation, as provided in the Federal control act, but for damages against the Government arising out of the then unlawful action of the President and of the director general in the taking over of property, for the taking of which there was no authority under the law. Such a condition is not seriously to be considered, but the suggestion leaves no room for doubt that the President, in assuming control of the independent water lines, lawfully exercised a power clearly delegated in the national defense act.

Mr. Wright's objection to the omission from the transportation act and from the Esch-Cummins bill of any reference to water lines, I submit, is unfounded. The purpose of the Federal control act was to define the relations and the conditions governing compensation as affecting the lines taken over under the original proclamation. The Federal control act expressly anticipated the taking over of lines other than railroad lines; and, in order to comprehend them by the most generic possible terms, employed the expression "other systems of transportation," expressly extending the provisions of the Federal control act to systems of transportation thereafter to be taken over by the President, presumptively, in pursuance of the national defense act.

The so-called order of relinquishment which the Merchants & Miners' Transportation Co. declined to accept, was issued by the director general under an assumption of power, which he did not, in fact, have. That is not debatable, if the committee please, because Congress had expressly defined the specific terms under which these lines might be relinquished. All lines might have been relinquished prior to July 1. No line might have been relinquished subsequent to July 1, except with the consent of its owners. That was clearly a limitation upon the power of the President, either directly or through the director general, to relinquish a particular line after July 1, except with its consent.

Mr. Wright has explained, and we appreciate the candor and the clarity of his explanation, but we should like to supplement his reasons for the Merchants & Miners' Transportation Co. having manifested a different attitude from the attitude of the other three lines which accepted relinquishment in pursuance of the director general's so-called order of relinquishment. The Merchants & Miners' Transportation Co. is in a class by itself both as to its relations with the Government and as to the character of its service. For nearly 70 years it has been engaged in an exclusively coastwise trade. Until comparatively recently it has never embarked in other than a coastwise venture. The Clyde and Mallory Lines, on the other hand, during and prior to the period of Federal control, had a few ships which were capable of going overseas; and those companies had dabbled in that service.

Another decided feature differentiating the Merchants & Miners' Transportation Co. from the Clyde and Mallory Lines is suggested by Mr. Wright's enigmatical statement that the Merchants & Minors' Transportation Co. had not been "injured" by requisition through the Shipping Board.

The Merchants & Miners' Transportation Co. was the only important American coastwise water line then in service, the vessels of which were not so requisitioned. The general order of requisition was promulgated by the board under date of October 12, 1917, and was made effective on October 15, 1917; but on October 13, 1917, before it had become effective, the Merchants & Miners' Transportation Co. was excepted from its application.

That the effect of having their vessels requisitioned by the Shipping Board was regarded by the carriers so favored as highly desirable may be judged from the fact that the Merchants & Miners' Transportation Co. urged most earnestly that the board retain its vessels. The Shipping Board, for reasons best known to itself, declined to do so; with the result that the Clyde and Mallory Lines, and all the other lines whose vessels were requisitioned by the board, received for their least efficient ships a basis of charter hire determined by the efficiency of the most efficient vessels then afloat. In other words, the Shipping Board prescribed for each vessel subjected to requisition, regardless of its age or tonnage in excess of 2,500 dead-weight tons, a rate per dead-weight ton prescribed as compensatory for vessels of the most efficient type. Through this arrangement, the Clyde, Mallory, and other lines received for their vessels in every respect comparable to those of the Merchants & Miners' Transportation Co. a rate of compensation per dead-weight

ton identical with the rate allowed by the board on trans-Atlantic lines of equal speed.

With the support of those profitable rates, the favored lines were able to outbid us for labor and for ships' supplies; and, while their compensation was measured by the serviceability of their most efficient vessels, we were compelled to operate, throughout the requisition period, under coastwise rates depressed by subnormal rail competitive rates, at an expense almost as great as that required for overseas service. I hold no brief for or against any line other than the Merchants & Miners' Transportation Co.; and I particularize the Clyde and Mallory Lines merely because the question of their comparative status has been injected into the discussion by statements heretofore made to the committee.

The rates of charter hire prescribed by the Shipping Board amounted in the aggregate to approximately five times the amount claimed by the Merchants & Miners' Transportation Co. for the use and control of its system by the director general. That is, the basis or, to quote Mr. Wright, the "yardstick" applied by the Shipping Board as the criterion for determining the value of the services rendered by requisitioned vessels was such that, if it should be applied by the director general in the admeasurement of the compensation due to the Merchants & Miners' Transportation Co., the latter would receive approximately five times the amount of its claims now pending adjustment.

The basis upon which the Merchants & Miners' Transportation Co. conducted its preliminary negotiations with the Railroad Administration, to which Mr. Wright has referred, is immaterial, for the reason that, since Mr. Wright came into the administration—certainly since I have been associated with the company—our negotiations have been consistently in furtherance of the idea that Congress intended to treat alike all carriers similarly situated, that the omission from section 209 of any provision for systems such as the Merchants & Miners' Transportation Co. was purely inadvertent, and that Congress in due season would correct the situation by amendment of the transportation act. We have consistently intended at such time to have established our eligibility to the benefits vouchsafed by the statute.

A question was raised this morning as to the effect of the company's acceptance of the guaranty provisions of the transportaton act, in advance of any provision in the statute for such acceptance—and, in deference to Judge Webster's lucid exposition of his views, I hesitate to enter upon ground whereon angels might "fear to tread." This question, however, becomes immaterial in the light of the admitted fact that we never had the faintest idea that our earnings during the guaranty period would show a profit. We knew that nothing short of a miracle, which we did not anticipate, could transmute our inevitable loss into profit; and at the time we accepted, or assumed to accept, the provisions of section 209 we were practically as certain as we are now certain that our action, if made effective by a supplemental amendment to the statute, would entail an expense to the Government. It would be disingenuous on our part to intimate a purpose to the contrary; and it has been merely our desire to establish our eligibility under the law which we believed that Congress in due time would pass.

If I may interpose my personal opinion, I agree with Mr. Sanders—in all deference to the opinion of Judge Webster—that if the Merchants & Miners Transportation Co., in contemplation of a retroactive amendment of the statute, had accepted the provisions of the guaranty, and if Congress, in recognition of that acceptance, had enacted the amendment for which we are now asking, the company would have been estopped from repudiating its acceptance, unless such acceptance had been repudiated prior to the final approval of the amendment. I think that having accepted it we would be absolutely bound by our acceptance in event of subsequent action by Congress along the lines proposed, unless prior to such action we had withdrawn our acceptance.

But, as I have said, the entire question becomes academic in the light of our express admission of our practical certainty that we could not, during the guaranty period, earn more than our standard return. Our freight had been diverted—and I say this without criticism of the Railroad Administration, which was acting entirely within its province—but it is an immutable fact that our rates had been disorganized, our traffic had been diverted, and our organization had been disrupted.

Mr. Wright has told you that one of the first acts of the Railroad Administration was to eliminate a long haul of some 576 miles, which was regarded by the director general as unnecessary. He has told you in the same breath that the water-line link from Boston to the South was prerequisite to the system contemplated by Federal control. In order to provide that link we had found it necessary to compete with direct rail line service, even at the expense of an added water haul, which under a unified control would not have been necessary. When the director general discontinued our policy in that respect he diverted traffic from us and augmented the difficulty of our rehabilitating our service.

Those were the reasons why, as a matter of self-preservation, we declined to accept relinquishment. Those are the considerations which we submit now entitle us to the guaranty on exactly the same basis that it is made available to the rail-line carriers.

Mr. Huddleston this morning said, and I am sorry he is not here——

Mr. NEWTON. If I may interrupt right there.

The CHAIRMAN. Mr. Newton.

Mr. NEWTON. I directed a question to Mr. Wright a few minutes ago. Now, what I can not understand is this: When there was so much time taken up here on this transportation act in committee, when everybody appeared before the committee, and there was talk on guaranties which reached clear out in my country, so that I got wires and letters protesting and commending, your company did not appear before the committee and make some effort, either to get in or to inquire as to whether or not you were in, instead of waiting until this time. That is what I can not understand.

Mr. KENT. May I defer the answer to that question for a few minutes, Mr. Newton?

Mr. NEWTON. Yes, sir.

Mr. KENT. I had in mind to answer that particular point.

Mr. NEWTON. Yes.

Mr. KENT. I thank you, sir. An obvious misapprehension persists, I think, in the minds of some of the Members as to the effect of the referees' decision. The Federal control act, in contemplating a definition of the terms governing the relations between the Government and the carriers subjected to Federal control, provided that in cases of dispute, such as this, either party might apply to the Interstate Commerce Commission for the designation of three referees, and that for the personnel of such boards the membership of the commission as well as its employees should be eligible or subject to draft. The board of referees so constituted was in effect a court of special jurisdiction.

That it was in such a court is apparent from the terminology of the statute providing for its creation and from the specification of the proceedings governing its deliberations.

We have complied literally with the prescriptions of the statute as to the submission of our evidence to such a board. That board has passed down its decision, which, I submit, Mr. Chairman, should have the force and effect—at least, so far as Congress is concerned—of the decision of a nisi prius court.

Instead, therefore, of the view that was given voice this morning, that the decision of the referees is nugatory until affirmed by the courts, I submit as the correct view that the decision of the referees, being a decision of a court especially created by Congress for specific purposes and acting clearly within the purview of those purposes, is entitled to be accorded the finality of a judicial decision until reversed by a court of competent jurisdiction.

The act expressly provides that if either party is dissatisfied with the award of the referees a right of appeal to the Court of Claims shall be preserved. The Merchants & Miners' Transportation Co. is in every respect satisfied with the award as made. We asked for $1,219,000, and the referees decided in effect that we are entitled to approximately $2,700,000. We are entirely satisfied with that decision. I believe it would not be a correct statement to say that the director general has rejected it. He has simply not yet accepted it. But he has not availed himself of his privilege under the statute of appealing to the Court of Claims, and I submit that until he does so and until the decision is reversed by a competent court it should be accepted as the law of the land.

The referees have held that the Merchants & Miners' Transportation Co. was under Federal control upon the termination of Federal control; but, answering one of the questions submitted to Mr. Wright this evening, that issue also becomes immaterial, as we only ask from Congress that it permit us to establish our status under section No. 209 exactly as we might have established it if we had been a railroad.

If the director general should further contest our claim that we were under Federal control upon the termination of Federal control, we are prepared to establish that fact in any court to which Congress may refer the question.

We are confident that the director general, under Mr. Wright's able advice and counsel, is going to do the eminently fair thing in this connection. We feel that the administration, with its plethora of confusing and conflicting duties, has not yet had an opportunity to consider this case on its merits, and we are patient and content to

bide our time, with the confident assurance that as soon as the director general can deliberate, can pause in his momentous efforts long enough to read the law and the decision of the referees, there will be no further controversy on this point.

But be that as it may, we are prepared to take our chances in the courts, and all we ask is the privilege of establishing our status and we shall establish it. If we do not, Mr. Chairman, that will be our misfortune.

Mr. LEA. May I ask a question?

Mr. KENT. By all means.

Mr. LEA. Do I understand that the referees decided you were entitled to a specific sum?

Mr. KENT. Not to a specific sum, Mr. Lea, but the referees established certain basic principles. They sustained our contentions as to our right to a standard return on the basis of 65.971 per cent of our standard return during the test period.

Mr. LEA. How much would that be?

Mr. KENT. Approximately $826,000. They also sustained our right, not to depreciation, as we put it, but to undermaintenance, which amounts to three or four times as much as we had claimed for depreciation. The referees also recognized our right to full compensation for operating losses; and, without specifically saying in terms that we are entitled to $2,700,000, the result of a computation of our claim on the basis of their decision is that we could establish our claim for that amount.

Mr. LEA. Well, those claims would be compensation for the period during which you were under Federal control.

Mr. KENT. That is right, Mr. Lea; yes, sir.

Mr. LEA. That is a separate question from the one that is involved in this case?

Mr. KENT. Absolutely so, except that our status as being under Federal control must be established as a condition precedent to our eligibility to this guaranty.

Mr. LEA. I see. But if that decision should be adverse to you?

Mr. KENT. Then we are out of luck, Mr. Lea; simply out of luck.

The CHAIRMAN. Did you get the answer you wanted, Mr. Newton?

Mr. NEWTON. No; he is deferring his answer to my question.

Mr. KENT. I shall come to that presently.

A suggestion was made this morning, in answer to a statement by Chairman Clark, that it would be within the province of the President to defeat the jurisdiction of the Court of Claims. Such a contention is unfounded; and I revert, in passing, to the proposition which I have submitted that the President is expected to use his judgment about accepting the decision of the referees; but if he abides by that decision he obviates occasion for recourse to the Court of Claims. He is not divesting the Court of Claims of any jurisdiction given it by its organic act or by any supplemental statute. He simply accepts as final the decision of the referees, just as a private litigant might accept as final an adverse decision of a nisi prius court. If the President should see fit to accept the decision of the referees as final, he would merely acquiesce in their judgment and would not in any sense divest the Court of Claims of any of its jurisdiction.

Mr. MERRITT. Only in the sense that the decision of the Court of Claims would not be called for.

Mr. KENT. For the same reason, Mr. Merritt, when a private litigant gets an adverse decision from a nisi prius court and declines to appeal it, he does not divest the court of appeals of its appellate jurisdiction.

A suggestion was made this morning as to the distinction between the moral and the legal obligations here. We suggest that the obligation—we do not call it an obligation; we will call it a matter of largess, if you please. But whatever it is, whatever sentiment actuated Congress in regard to the railroads was applicable with equal force to the Merchants & Miners' Transportation Co. If it was clearly not a legal consideration that induced the passage of section 209 in its original terminology, by the same token it is not a legal consideration upon which we now submit our claim to this committee. It is purely a moral obligation. If it was a moral obligation to the railroads it is a moral obligation to us.

A question was raised as to the propriety of demanding that the Government should live up to its moral obligations in view of our having stood strictly upon the letter of our legal rights. We submit in answer to that suggestion that we simply followed the natural instinct of a man who is drowning and who grabs at a straw. It was a principle of self-preservation. We recognized that, unless we did come under this provision, we would be severely penalized by reason of our inability to compete with other lines which, during the full-moon period of requisition by the Shipping Board, had reaped an abundant harvest.

A question has been raised as to the immunity of this carrier from control by the Interstate Commerce Commission. I do not know, but I think perhaps in the minds of most of the members that point has been clarified; but, in order that there may be no question in this regard, 80 per cent of the company's business is subject to, and its rates, regulations, and practices are absolutely controlled by, the Interstate Commerce Commission. The remaining 20 per cent of its business, representing purely port-to-port service, is controlled with equal effectiveness by the United States Shipping Board, so that 100 per cent of the company's business is controlled by the United States Government. If this were not true, as I have intimated, our rates would be no less effectively controlled by competition of controlled rail service, for the reason that our rates could not be advanced beyond a competitive rail basis.

A suggestion was made this morning that we had not made any attempt to apply a higher schedule. Absolutely true, because if we had done so it would have been futile. Even assuming that the Shipping Board and the Interstate Commerce Commission would have acquiesced in it, it would still have been futile, because it would have been a purely paper rate in that no traffic would have been attracted by it. If we had increased our rates fivefold we would have lost more than we did lose, because we would have lost the traffic which we actually had.

One other point that was made—and, Mr. Chairman, I am going to hurry, because I appreciate the patience of the committee——

Mr. LEA (interposing). In that connection may I ask a question?

Mr. KENT. Yes; surely, Mr. Lea.

Mr. LEA. In regard to the compensation that the Government is authorized to make you for Federal operation, is it broad enough to include damages done to your company by disarrangement of your business?

Mr. KENT. It is an inclusive compensation, Mr. Lea, and it covers all the resultant losses and consequential damages entailed upon Federal control. It does not in terms allocate a certain proposition of compensation to damages resulting from a diversion of traffic or from a disorganization of tariff schedules; but it is the comprehensive unit of compensation which has been prescribed, which covers everything, and which we are perfectly willing to accept. It is ancient history now to refer to our having at one time claimed Shipping Board compensation, because we have not claimed that since the memory of man runneth to the contrary.

Mr. NEWTON. It takes in the efficiency of labor.

Mr. KENT. It takes in the efficiency of labor. It takes in everything.

Mr. LEA. Will it be broad enough to cover what the guarantee really intended to cover?

Mr. KENT. Do you mean for the extended period?

Mr. LEA. The compensation for the period of Federal control.

Mr. KENT. Not by any means, Mr. Lea. I say to you that if it was the intention of Congress to limit, to circumscribe, the compensation of the rail lines during Federal control, and to cover this post-control period, then by the same token it is applicable to us. We only ask that we be treated on a parity with the rail lines. If the standard control of the rail lines during the period of Federal control did not cover this post-control period, I answer you that it was not sufficiently comprehensive to include our compensation for the six months following Federal control.

Mr. LEA. I think that should be determined on the basis of equity, based on your facts. Whether or not the railroad settlement is fair or unfair does not enter into it at all.

Mr. KENT. Whether that is fair or unfair does not enter into it at all. All we ask is to establish our right to the same benefit that the railroad companies have been given. Does that answer your question?

Mr. LEA. Yes.

Mr. KENT. A question was raised this morning as to the possible expediency of deferring action on this bill until we can secure an adjudication and affirmance, if you will, of the decision of the referees. If the committee please, that will be unnecessary, because, if we are permitted to establish our eligibility to the guaranty for the six months following Federal control, we will be in an infinitely better position to settle our basic claim with the Railroad Administration. We have got to get a certain amount of money. Our continued existence depends upon it. We are operating on borrowed funds to-day. We must get a certain amount of money from the Government if this service is to be continued. If we can get a part of that as extended guarantee, it is going to reduce the amount that we must insist be paid by the director general, and we have no doubt that we shall reach a point of common understanding with the director general.

Mr. GRAHAM. You are in the same boat, then, as the fellow who was poking at the stump and whose family was without meat.

Mr. KENT. How is that, Mr. Graham?

Mr. GRAHAM. Well, this fellow was digging at the stump, and he said, "There's just got to be a possum in that stump, because my family is without meat."

Mr. KENT. It is very much like that situation, Mr. Graham.

Now, Mr. Newton, answering your question: You will recall that this law was passed during the strenuous, hurried days preceding the adjournment of Congress. My time and the time of my company was almost entirely consumed in a vain effort, a fatuous effort, to wrest from the Railroad Administration some of the money to which we were entitled. We had very little time to consider the matter of legislation. I was kept posted, as a matter of currrent information, as to the progress of the bill; but there was never a moment's doubt in the minds of any of us that some day Congress would right the wrong that it had unwittingly done to us, and we felt that it was as little as we could do in those trying days not to harass this committee nor to take its time with the consideration of a matter that affected only ourselves.

Mr. NEWTON. Well, everybody was busy from about the 1st of July, 1919, until the law was passed to get in. Most every section of the country was represented down here, to have Congress right something or other that had happened during the time of Government control, and I am wondering how it was that a company so near the Capitol here did not get down here at all.

Mr. KENT. Just for that reason, Mr. Newton. Just because everybody else in the wide land was, we felt that we should not add the burden of our private claim to the burdens that already harassed this committee.

Mr. MERRITT. Was it just your natural modesty?

Mr. KENT. It was not our natural modesty, Mr. Merritt, but our natural consideration of eternal fitness.

Mr. MERRITT. When did you get over that?

Mr. KENT. We got over that, Mr. Merritt, if you please, when it became apparent to us that the matter must be brought to the attention of the committee.

Now, Mr. Chairman, are there any other questions? I think that I have covered generally the proposition.

The CHAIRMAN. Are there any questions to be asked of Mr. Kent by the members of the committee?

Mr. DENISON. Of course, it is a fact that the Congress has now more time to consider it than it then had.

Mr. KENT. That is a consideration which I think would have justified our deferring the matter, Mr. Benson.

Mr. NEWTON. It is also easier to get by.

Mr. WEBSTER. Mr. Kent, I find myself in such thorough accord with pretty nearly all of the legal principles which you have stated——

Mr. KENT. I thank you, sir.

Mr. WEBSTER (continuing). I dislike to find myself out of line with you on any of them; and I think it is perhaps due to a misunderstanding that we are out of line at all.

This morning when I was interrogating Commissioner Clark it was with this thought in mind, that it was attempted to be shown here that the passage of this amendatory act would place your com-

pany in precisely the same situation of other companies which were included in the transportation act at the time of its passage. I undertook to show that perhaps that was not accurate, because all of the companies which were included in the transportation act were required, within the time limited by the act, to file an acceptance of the guaranty, if they saw fit to stand upon it, and as a part of that acceptance to agree that if the company earned an amount in excess of the guaranty that it would turn back to the Government the excess. And that in this situation that principle could not possibly operate, for the reason that we were attempting to do retroactively what perhaps we should have done originally, and that if your company during the six months' period had earned an amount in excess of the guaranty, notwithstanding your election to come under the bill, there would have been no power on the part of the Government to compel you to account for the excess.

Will you explain to me now how the Government could have compelled you to do that?

Mr. KENT. Why, I think in this way, Judge Webster: That is the point to which I referred when I said that I hesitated to enter a field of discussion wherein angels might fear to tread. The whole purpose of this proposed amendment is to do what it is conceived should have been done in the first instance. If the statutes originally had been so framed, we would have been obligated by our acceptance. If we had made more than our standard return, we might have been legally compelled—I say legally we might have been, although the President might graciously have refrained from compelling us—to make restitution to the Government.

Mr. WEBSTER. Now, at the time you filed that acceptance, Mr Kent, you were not included within the provisions of that law, were you?

Mr. KENT. No; that is what I said, Judge Webster.

Mr. WEBSTER. You would have had just as good a right to file a claim for the guaranty under the law as you would have had to file an acceptance of the provisions of the law in their relation to the guaranty; would you not?

Mr. KENT. No; because all we could have done would be what any railroad withwhich we were competing could have done. Now, I expressly prefaced my statement with the suggestion that if Congress had done in the first instance what we are now asking Congress to do—in other words, if section 209, as originally enacted, had comprehended our line, and if we had accepted the provisions of the statute as required in subsection b—then we could have been compelled to account to the Government for any excess above our standard return.

What we are asking now is that Congress simply eliminate—wipe out—the intervening months that have elapsed since the enactment of section 209, and put this provision in exactly as if it had been incorporated in the first instance, so that the amendment, if the act should be amended as we ask it, is to be considered exactly as it would have been considered if it had been passed in the first instance. Our acceptance, therefore, is to be considered on exactly the same basis as that upon which it would have been considered if the law had included us in the first instance.

But I say that the whole proposition is irrelevant, because we knew beyond the peradventure of a doubt that we could not make a profit, and that there would be no excess of which we would be required to make restitution.

Mr. WEBSTER. All right, but this fact remains none the less, that the Government in the transportation act of 1920 made no offer of any contract to your company, of any guarantee of anything, did it?

Mr. KENT. By the Government you possibly refer to the Interstate Commerce Commission?

Mr. WEBSTER. No; I mean the Government.

Mr. KENT. Well, the Interstate Commerce Commission is the Government, Judge Webster. It is a branch of the Government; and it sent us the form of acceptance approved by it in pursuance of the statute.

Mr. WEBSTER. No; the Government, acting through the Congress, made an offer to certain designated carriers of a certain guarantee.

Mr. KENT. That is right.

Mr. WEBSTER. Upon certain terms and conditions.

Mr. KENT. Yes, sir.

Mr. WEBSTER. Your company was not included in that act?

Mr. KENT. That is right.

Mr. WEBSTER. Then there was nothing for you to accept, was there, because you had not received any offer?

Mr. KENT. We were accepting our inchoate rights.

Mr. WEBSTER. What rights?

Mr. KENT. The rights that we hoped Congress would give us.

Mr. WEBSTER. Oh, yes; but I am talking about any legal rights.

Mr. KENT. No.

Mr WEBSTER. Now, then, if there was no offer of a contract for you to accept, you could not by any act of your own create a liability against the Government, could you?

Mr. KENT. We are not attempting to create a liability, Judge Webster.

Mr. WEBSTER. All right. Then if during the period of the guaranty you had earned twice the amount of the guaranty it would have been your money, because you were not within the original act, it would have been legitimate because you earned it under the law of the land at the time you received it, and it would not be within the constitutional power of the Government to take any part of it away from you, would it?

Mr. KENT. I think it would, Judge Webster.

Mr. WEBSTER. On what theory?

Mr. KENT. For this reason. We had given our acceptance. Now, then, regard that, if you will, as a challenge. We are betting the United States that during the guaranty period we will not make any money. The Government takes up our proposition before we have time to withdraw or repudiate it, and acting upon our acceptance passes a retroactive amendment making our acceptance effective. I think that we then would be clearly estopped from repudiating it.

Mr. WEBSTER. As I see, the only effect of your acceptance at all is as an act upon your part showing good faith.

Mr. KENT. It should have had that effect.

Mr. WEBSTER. It has a moral effect in that it indicates to us that you are not coming in subsequently, after having made a gamble

and lost, and ask the Government to make you whole. You say in proof of that that "we told you long in advance that we knew you were going to have a loss, and we told you this in the form of filing an acceptance which had no legal validity at any time, and has none now."

Mr. KENT. We are exactly in accord on that proposition, Judge Webster.

Mr. WEBSTER. Well, I thought we were.

Mr. KENT. Absolutely so. And I thank you for your exposition of it. Mr. Chairman, are there any further questions that anyone wishes to ask?

The CHAIRMAN. Are there any further questions that any members of the committee wish to ask Mr. Kent? If not, have you any further statement to make to the committee, Mr. Kent?

Mr. KENT. None, Mr. Chairman, except to express my appreciation of the courtesy accorded me by the committee.

The CHAIRMAN. Very well; that will be all; and we thank you, Mr. Kent.

(Witness excused.)

The CHAIRMAN. Will the Chesapeake Steamship Co. name some one who will state their views in the matter?

STATEMENT OF MR. GEORGE WEEMS WILLIAMS, 701 MARYLAND BUILDING, BALTIMORE, MD., GENERAL COUNSEL, CHESAPEAKE STEAMSHIP CO.

The CHAIRMAN. Mr. Williams, do you desire to proceed with your statement?

Mr. WILLIAMS. Yes, sir; Mr. Chairman, I will proceed.

The CHAIRMAN. Do you desire to proceed without interruption until you have concluded your statement?

Mr. WILLIAMS. No, Mr. Chairman; I will welcome questions as we go along.

Mr. Chairman and gentlemen of the committee, the Chesapeake Steamship Co. is a Maryland corporation, incorporated in 1900. It had, at the beginning of the war, five steamers adapted to inland navigation; that is, on the bay and its tributaries. It operated two lines, one line from Baltimore to West Point on the York River, with four or five stops on the York River between the mouth of the river and West Point. At West Point it connects with the Southern Railroad Co. for Richmond and other points. Its other line is on the Chesapeake Bay from Baltimore to Norfolk.

Its stock is owned, one-third by the Atlantic Coast Line Railroad and two-thirds by the Southern Railroad Co.

Its directorship is made up of eight gentlemen, one L. Green, who is an officer, vice president of the Southern Railroad Co., the others being J. J. Nelligan, president of the Safe Deposit & Trust Co., Baltimore, which is our largest institution of that kind, and who happens to be a director of the Atlantic Coast Line Railroad; Norman James, of Baltimore, president of the James Lumber Co., who happens to be a director of the Atlantic Coast Line Railroad; Waldo Newcomer, president of the National Exchange Bank, and who happens to be a director of the Atlantic Coast Line; F. S. Royster, president of the Royster Guano Co., Norfolk, who, so far as I know, is not connected with either railroad; E. Stanley Gary, of James A. Gary &

Sons, of Baltimore, cotton duck manufacturers, who is not connected with any railroad company; John S. Gibbs, of the Gibbs Preserving Co., who is not connected with either railroad company; and Key Compton, who is president of the company but not connected with either railroad.

Mr. DENISON. May I ask a question there—you say these gentlemen are directors?

Mr. WILLIAMS. Yes, sir.

Mr. DENISON. How can they be directors and not stockholders?

Mr. WILLIAMS. They have qualifying shares in a corporate sense. I do not think, under our Maryland laws, we have to have qualifying shares, but these gentlemen have one or two shares, and when we say that we are talking of matters of substance and not detail.

Now, the proposition is that we were taken over by the Railroad Administration, and were operated during the full time of Federal control of the railroads until March 1, 1920, when we were turned back. Our business was demoralized; our traffic connections were injured; the currents of traffic were all changed; our force was disorganized, and we came back that way, and so far we have not been able to recover. I do not want to take up any more time of this committee than is necessary to give you our views.

So far as I can see, there is absolutely no possible ground or suggestion that can be made why a carrier by water, under Federal control at the time Federal control was discontinued, is not entitled to the guaranty for the six months' period as much as a carrier by rail which was under Federal control. And the reasons which made Congress, so far as we know, put section 209 in the transportation act would have caused Congress to have acted in the same way in regard to water carriers.

Now, one question has been suggested here——

Mr. NEWTON (interposing). As I understand it, this company, the Chesapeake Steamship Co., is controlled by the Southern Railroad Co.?

Mr. WILLIAMS. No, sir; it is not controlled by it; the Southern Railroad Co. owns two-thirds of the stock. If the Southern Railroad Co., in the exercise of its stock ownership, would say, "We want to elect our own board of directors," and then cause the officers of the company to be directed by the board of directors to do this and that, it is perfectly obvious that the Southern Railroad Co. could do that; but that has not been the attitude of the Southern Railroad Co., and the Chesapeake Steamship Co. has been operated as an independent line.

I have got here the figures on the freight tonnage which it carries from port to port, and the freight tonnage which it interchanges with the various railroad lines, the Baltimore & Ohio, the Old Dominion, the Pennsylvania, and the other railroads at the towns which it touches.

Mr. NEWTON. How old a company is this?

Mr. WILLIAMS. The Chesapeake Steamship Co. itself was formed in 1900. Prior to that there was a company formed known as the Baltimore, Chesapeake & Richmond Co., in which the Southern Railroad Co. was interested.

Mr. NEWTON. When did the Southern Railroad Co. acquire the majority of this stock?

Mr. WILLIAMS. It had that stock ownership ever since the formation of the present company, in 1900, and prior to that it owned a controlling stock interest in the predecessor of the present company.

Mr. NEWTON. So that it would rather seem to me that it has been sort of considered as a part of the Southern Railroad System.

Mr. WILLIAMS. No; I would not say that, sir. It is a carrier that operates up and down the Chesapeake Bay and on the York River, connecting with and doing business at the Baltimore end with the Pennsylvania, the Baltimore & Ohio, and the Western Maryland.

Now, I do not understand why the Atlantic Coast Line is penalized because the Southern Railroad Co. did not elect for its own physical property to take the guaranty. I always thought that was an option given to a railroad, whether they would or would not come in, and I understand on good authority that, as a matter of fact, a railroad company whose stock is owned by the Southern Railroad Co. has been allowed the guaranty; I cite the Mobile & Ohio Railroad Co. and the Georgia Southern & Florida Railroad Co.

Mr. NEWTON. The term is used "system of transportation" in section 209.

Mr. WILLIAMS. That is a general provision taking care of such cases, for example, where the railroads actually operate the steamships.

Mr. NEWTON. My impression is that it would take in all the different companies that sort of operate together as one system.

Mr. WILLIAMS. I do not so read that section.

Mr. NEWTON. In my State, the State of Minnesota, the Great Northern system has a number of other corporate interests.

Mr. WILLIAMS. But in this—now, bear in mind—I should preface my remarks this way: We have not one complaint or fight against the Merchants & Miners' Transportation Co.; we feel that they have rights. But we do object to the language contained in the act, so far as it says "not controlled by any railroad company." And we suggest that the words "not controlled by any railroad company" be stricken out, because you get down to the real one test, and that is whether the carrier was under Federal control at the time Federal control ceased, and whether it lost money or was in a position to lose money, and it does not make any difference whether the traffic moves either partly on land by rail or wholly by water. Therefore, if those words on the thirteenth and fourteenth lines of the first page of the bill, "not controlled by any railroad company," and on the thirteenth line of page 2, "not controlled by any railroad company," were eliminated, you would then have a bill which would cover the Merchants & Miners' Transportation Co. and would also absolutely cover the Chesapeake Steamship Co.

Mr. DENISON. Have you had any doubt but you were under the act?

Mr. WILLIAMS. I am very glad you brought that matter up, Mr. Denison. Our president, Mr. Compton, had not the slightest doubt but this company was under the act. The Merchants & Miners' Transportation Co, I believe, or some of the officials of it, thought that the language, "heretofore engaged as a common carrier," would cover it. I know that was the thought of the Chesapeake Steamship Co., and the question never came up to me as counsel until about three months ago, when the Interstate Commerce Com-

mission held we were not under the act. And they applied a new test to determine who owned it. Where they got that test I do not know; it is not within the four corners of the bill. It is a test originated by the Interstate Commerce Commission, and they did not apply it to rail lines whose stock is owned by a railroad company that has not accepted the provisions of the act. We say there is no basis for that in this act. Our contention is we are under the Federal control, no matter whether our traffic moves all by land, or partly by water and partly by land.

Mr. MAPES. If the Interstate Commerce Commission should accept your construction of this section 209 and hold that the Chesapeake Steamship Co., however, was entitled to the guaranty under section 209, where would that leave it in connection with these others?

Mr. WILLIAMS. The Merchants & Miners' Transportation Co.?

Mr. MAPES. No: in connection with these other companies that are owned by this railroad company, such as the New England and the Old Dominion?

Mr. WILLIAMS. That would leave them just where they are; most of them have collected the guaranty.

Mr. MAPES. The commission holds that by reason of the fact that those companies are controlled by the other companies they come under the law?

Mr. WILLIAMS. Yes; but you can put this theory——

Mr. MAPES (interposing). It seems to me that that is consistent.

Mr. WILLIAMS. No, sir; they could say this: They could say that where the stock of a water carrier is entirely owned by one railroad, then they will consider it as one system.

Mr. MAPES. You would make a distinction, then, between——

Mr. WILLIAMS (interposing). A diversity of stock ownership.

Mr. MAPES (continuing). One carrier owning the stock, or two?

Mr. WILLIAMS. Yes; the Chesapeake Steamship Co. is not owned entirely by one railroad.

Mr. MAPES. You would not make that distinction until an amendment of the act is adopted?

Mr. WILLIAMS. No, sir. In common parlance, I could not tell you in truth that the Chesapeake Steamship Co. was a part of the Southern Railroad Co.; it does not give them any preference.

Mr. MAPES. Do you base your claim on the fact that this is an entirely separate entity from the railroad company?

Mr. WILLIAMS. Yes; as a matter of law, that is true.

Mr. MAPES. It is not more so than the Old Dominion and some of the other lines.

Mr. WILLIAMS. The Old Dominion is not in the same situation exactly; nor is the Ocean Steamship Co.

Mr. MAPES. They are separate entities.

Mr. WILLIAMS. Yes; if the Interstate Commerce Commission wanted to treat the Ocean Steamship Co. as a part of the Central Railroad of Georgia, you can understand it; but you can not understand how they can treat a company, one-third of whose stock is owned by a different railroad system from that which owns the majority of the stock; it is not a part of the system.

Mr. MAPES. You would have to have stockholders to serve as members of the board of directors.

Mr. WILLIAMS. But that would not be a part of the system. I have made my statement, and I do not know that I could strengthen it by repeating it.

Mr. SWEET. The Southern Railroad Co. does not operate the Chesapeake Steamship Co.?

Mr. WILLIAMS. No, sir.

Mr. SWEET. And its connection with the steamship company is the ownership of two-thirds of the stock?

Mr. WILLIAMS. Yes, sir.

Mr. SWEET. But the steamship company was a separate entity?

Mr. WILLIAMS. Yes, sir.

Mr. SWEET. And worked in conjunction with the Southern Railroad Co., but its connection with that company was simply the ownership of two-thirds of the stock, so far as ownership of the company was concerned?

Mr. WILLIAMS. Yes; I have got here, which, with the permission of the committee, I will file for insertion in the record, a statement of the tonnage over the two lines for all the years since 1914, except the year 1918, and then in 1918 there was some arbitrary—not in the sense of injustice, but just an arbitrary allocation of trade between the Bay Line—the Baltimore Steam Packet Co.—and the Chesapeake Line, in dividing the tonnage of the Atlantic Coast Line and the Norfolk & Western.

The CHAIRMAN. Without objection, the table will be inserted in the record.

(The table referred to is printed in full, as follows:)

Statement of traffic, by percentages, for years 1914, 1915, 1916, 1917, and 1919, of the Chesapeake Steamship Co.

CHESAPEAKE LINE.

Connection.	1914		1915		1916		1917		1919	
	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.
Southern Railway	81,399	47.4	76,255	43.6	90,582	45.3	68,632	38.7	50,266	32.2
Atlantic Coast Line [1]	34,208	20.0	37,801	21.5	39,335	19.7	32,220	18.2	48,785	31.2
Norfolk & Western [2]	7,302	4.2	6,541	3.7	7,122	3.6	6,493	3.7		
Norfolk Southern R. R. [3]	7,740	4.5	10,445	5.9	12,126	6.1	11,718	6.6	14,693	9.5
Virginian Railway	853	.6	1,202	.7	1,526	.7	1,187	.7	1,477	.9
Old Dominion S. S. Co.	2,548	1.4	2,446	1.4	2,513	1.3	2,882	1.6	2,344	1.6
Chesapeake & Ohio Ry. Co.	103	.3	130	.2	163	.1	282		264	.2
Norfolk local	30,238	17.6	33,582	19.3	39,700	19.7	44,262	24.9	31,136	19.9
Old Point Comfort	6,932	4.0	6,537	3.7	6,974	3.5	9,692	5.6	7,120	4.5
Total	171,473	100.0	174,939	100.0	200,045	100.0	177,348	100.0	156,085	100.0

YORK RIVER LINE, VIA WEST POINT, VA.

Southern Railway	50,801	58.8	45,595	56.7	50,649	54.9	53,812	50.9	46,705	64.2
Chesapeake & Ohio Ry	9,456	11.0	9,950	12.3	14,478	15.7	22,740	21.5	5,212	7.2
Virginia Steamship Co	5,497	6.4	5,140	6.4	5,429	5.9	5,076	4.8	2,578	3.5
York River landings	17,424	20.2	15,665	19.4	17,149	18.5	19,865	18.8	12,917	17.7
West Point Local	3,041	3.6	4,206	5.2	4,682	5.0	4,223	4.0	5,438	7.4
	86,219	100.0	80,556	100.0	92,387	100.0	105,716	100.0	72,850	100.0

[1] In 1917 tonnage of the Atlantic Coast Line R. R. was divided between the Baltimore Steam Packet Co. and Chesapeake Steamship Co. (and also in years 1914, 1915, and 1916), but under Federal control all tonnage was handled by Chesapeake Steamship Co.

[2] In 1914, 1915, 1916, and 1917 tonnage of the Norfolk & Western Ry. was divided between the Baltimore Steam Packet Co. and the Chesapeake Steamship Co., but under Federal control all traffic was handled by the Baltimore Steam Packet Co.

[3] In 1914, 1915, 1916, and 1917 tonnage of the Norfolk Southern R. R. was divided between the Baltimore Steam Packet Co. and the Chesapeake Steamship Co., but under Federal control southbound tonnage was handled by the Chesapeake Steamship Co., and northbound tonnage by the Baltimore Steam Packet Co.

Mr. WILLIAMS. And in addition to that, this steamship company carried freight to every railroad connecting with this railroad company. And, observe, for example, that at the high-water mark only 47 per cent of this tonnage went to the Southern Railroad Co. The balance of it, in 1914, was as follows: Twenty per cent to the Atlantic Coast Line, 4.2 per cent to the Norfolk & Western, 4.5 per cent to the Norfolk Southern Railroad, 0.6 per cent to the Virginian Railway, 1.4 per cent to the Old Dominion Steamship Co., 0.3 per cent to the Chesapeake & Ohio Railway Co., 17.6 per cent to the Norfolk Local, and so on; and that varies, so that in 1919 we find that the Southern Railroad is only getting 32.2 per cent of the tonnage of the steamship company, and the Atlantic Coast Line is getting 31.2 per cent. So if you will look at this exhibit, you will see that the steamship company is no integral part of the Southern Railroad system, in the sense that the railroad company would not let anybody else in.

Mr. SWEET. The president of that company also owns stock in the Southern?

Mr. WILLIAMS. No, sir; he does not own any stock in the Southern Railroad Co. at all; he was simply a man who was selected as a man who had knowledge and for his fitness in handling problems in the Chesapeake Bay.

The CHAIRMAN. As to the distinction in the real ownership, which you have described, between the steamship company and the railroad company, you might cite the instance of the New Haven Railroad Co.; they have asked for protection here for three or four steamship companies, and it happens that those steamship companies are so affected as to dockage, and so on, that they can neither receive from nor deliver to any carrier company whatsoever any freight, except to the New York & New Haven Railroad, and they are simply a part of that system. I think I can illustrate what was meant by this law. I can say to everybody present, as one of those who framed it originally, it is a system made up of several rail and water transportation companies.

Mr. WILLIAMS. In the case you cite, Mr. Chairman, of the New Haven road, the steamship company was as much a part of the New Haven road as the ferry across the North River used to be to the Pennsylvania Railroad Co.

The CHAIRMAN. And no boats whatsoever can go to their docks, except their own boats.

Mr. WILLIAMS. Yes. There is one other question, and that is the question that Judge Webster put so forcibly to Mr. Kent, and that is whether an acceptance under an act which does not cover the carrier concerned would be binding at law. Now, I agree absolutely with Judge Webster's conclusion generally. It would be a moral obligation. But you will remember there was some talk to-day about this being a gamble; that is, the carrier could put in the acceptance and win both ways. Now, it was not a gamble; the figures show that the Chesapeake Steamship Line had about as much chance to make money in the six months as a plow horse would have to race against Man o' War, and, if you will allow the slang, that is "going some."

I will read you the figures: In 1919 we had a total operating revenue of $1,709,965.70; our operating expenses were $1,708.259 51. The difference between operating revenue and operating expenses, with-

out any question of paying interest, or anything of that kind, was $1,724. Now, when we come to the two months immediately preceding the making of this deal, we showed, for January and February, 1920, operating revenue of $200,385.98, and operating expenses of $269,372.91, or a deficit of $69,000, in round numbers. So, by no possibility, would any real sport call that a gamble. It was not. It was absolutely certain that there would be a deficit.

Now, I do not want to take the time of the committee, but I do want to call your attention to a few things. You take these roustabouts on the water, to whom we used to pay 20 cents an hour, and they were getting 75 cents straight, and a dollar for overtime, and we had, so I am told, a colored fireman who was making so much money that when the boat laid over in Norfolk, he took his automobile down on the boat and paid the freight on it, so that he could have his automobile to run around Norfolk when the boat laid over there on Sundays. That might have been due to the wages, or it might have been due to traffic conditions in certain commodities. But that is the fact.

So when the boats were turned back, you just put a mortgage on them that we can not get rid of, and what we are asking for now is simply to treat us like Congress wanted to treat the carriers by rail, or partly by rail and partly by water. And we say, when it comes to a proposition of $87,000 the Government ought not to hesitate a minute on it, because there is no real reason that you can advance except that Congress overlooked us. We were not on the job watching after our rights, and the period has now passed, the damage has been done, and we have suffered it, and the Government does not have to correct it if it does not want to.

Mr. DENISON. There is one question I want to bring out: Has the Interstate Commerce Commission recognized the claims of certain railroads which are a part of the Southern system and without the guaranty?

Mr. WILLIAMS. I am so informed, in the case of the Mobile & Ohio.

Mr. HALE. It is so reported in the Interstate Commerce Commission report.

Mr. DENISON. I wanted to ask the reason for that distinction; I was wondering whether you knew the reason?

Mr. WILLIAMS. I do not. I heard they turned us down on the ground that we were a part of the Southern Railroad system. If you can get around everything else, I do not see how you can get around this: Here is the Atlantic Coast Line, which has a one-third interest in the Chesapeake Steamship Co., and they will take one-third of the $87,000 loss.

Mr. SANDERS. I was going to suggest, the first thing in the original act is carrier by railroad—any kind of a carrier. And then the other classification is carriers partly by railroad and partly by water.

The CHAIRMAN. Are there any other questions?

Mr. WEBSTER. Just one question. This thought occurred to me, that if it has been the policy of the Interstate Commerce Commission in figuring the losses to the companies which have accepted the act to take into consideration the losses incurred in operating a water carrier, why should not the logic of that situation apply to a corporation which elected to stay out of the law, and carry with it your company, including its burden, to share the loss?

Mr. WILLIAMS. Judge Webster, you have to do this: In the first place you have to establish that the Southern Railroad Co. has committed some misdemeanor in staying out. That was purely an option. The Southern Railroad by not coming in has not committed any offense by not coming in, directly or indirectly. But assume that you ought to penalize it, you are hitting the Southern over the head, and the Atlantic Coast Line at the same time and in the same operation. There is no machinery by which you could say, "We will allow you one-third to indemnify the carrier who owns one-third of the stock and that did come in under the guaranty."

Mr. WEBSTER. Take this case: Suppose the Southern Railroad Co. had filed an election under the transportation act to take the benefit of the guaranty——

Mr. WILLIAMS (interposing). Yes.

Mr. WEBSTER. And your company had taken no independent action at all, would not your company have claimed the benefits of the guaranty?

Mr. WILLIAMS. Of course that is a hypothetical case, and it is right hard to assume. But I assume we would. We have the Baltimore steam packet line, which operates the same type of vessel as we do, leaves the same places, Baltimore and Norfolk, every day at the same hour that we do, and they, because their stock is owned absolutely by the Seaboard Air Line, would get the guaranty for the six months, and the Chesapeake Steamship Co., which does exactly the same sort of business, in the same way, is barred.

Mr. WEBSTER. Do you not think that in order to get anywhere under this law you have got to consider these carriers as an entity, as a system, and that they must either come in as an entity or stay out as an entity, and that they can not come in in part and stay out in part?

Mr. WILLIAMS. Judge Webster, it is undoubtedly true that the courts have held that where the stock of one corporation is held entirely by another, that in order to do equity and sometimes in equity tort cases, they will treat it as one and the same. But that principle goes down the minute that you introduce into one corporation a substantial diversity of stock ownership. In other words, you can not call the Chesapeake Steamship Line a part of the Southern Railroad Co., first, because it has a different legal entity, or if you answer to that and say that the Southern Railroad controls it—admitting that—then you have got to say, in order to make it a part of the Southern Railroad Co., that it owns all the stock.

The CHAIRMAN. Mr. Williams, what do you think would have been the result if they had owned equal parts, 50–50?

Mr. WILLIAMS. That is another hypothetical question which is hard to answer. But what I am getting at is this: That if a substantial part of the stock is owned by more than one corporation, then you can not call the property of the first corporation a part of the system of the other, or of either of the stock-owning corporations, because it is not so. That is the real answer.

Mr. WEBSTER. One further question: There appears to be an apparent inconsistency, Mr. Williams, in your position.

Mr. WILLIAMS. How is that?

Mr. WEBSTER. It may be my misconstruction of your position.

Mr. WILLIAMS. Possibly so.

Mr. WEBSTER. I understood you to say a moment ago that the mere fact that the Southern Railroad Co. owned two-thirds of the Chesapeake Steamship Co.'s stock had nothing to do with this question; that the fact remained that the Chesapeake Steamship Co. was an independent entity and should be regarded as such.

Mr. WILLIAMS. Yes, sir.

Mr. WEBSTER. And a little later in your statement you said that you thought, even though the entities should be separate, the companies should be included, if all the stock was owned by the railroad company. In one case you say the ownership of stock has nothing to do with it, and in the other case it has all to do with it.

Mr. WILLIAMS. Here is what I mean: We start out with the two corporations here as distinct and separate as John Smith and Bill Jones; that is fundamental. Now, the courts go beyond that and say, "We will not treat the two corporations as two separate entities if one owns all the stock of the other, because if you do you are dealing with a sham and forgetting the substance." But no court ever held that a corporation whose stock is owned by two different corporations in substantial proportions can be regarded as the property of one of the stockholders.

Mr. HOCH. Is not two-thirds of the stock a substantial control?

Mr. WILLIAMS. Yes; but what are you going to do with the one-third?

Mr. HOCH. That is simply the usual hard luck of a minority stockholder who is frozen out.

Mr. WILLIAMS. But he is not frozen out.

Mr. HOCH. You are frozen out, are you not, so far as this guarantee is concerned?

Mr. WILLIAMS. He is frozen out by the Interstate Commerce Commerce Commission by putting in force a test which you can not find in the law.

Now, if we could take that matter into court I would not be bothering you gentlemen at 11 o'clock at night on July 11; but you can not go into court, because when the act was passed, for some reason other, they just overlooked that matter.

Mr. HOCH. Do you say that although the Southern Railroad Co. has owned two-thirds of the stock of the Chesapeake Steamship Co. since the organization of this company it has never sought to control the affairs of that company by the election of the board of directors, and so on?

Mr. WILLIAMS. So far as I know, it has not. The best test of that is what has been done. Now, we show you how those boats are operating on the Chesapeake Bay and its tributaries, and how they handle the freight. Is it a Southern Railroad proposition? Look at our tabulation here and you will see that we are in the broadest sense a common carrier.

Mr. GRAHAM. Let me ask you, Do you have any working contract with the Southern system?

Mr. WILLIAMS. Not a bit.

Mr. GRAHAM. No contractural relations at all?

Mr. WILLIAMS. No, sir; they get the same treatment as any other road.

Mr. GRAHAM. Do you make connections with their passenger trains?

Mr. WILLIAMS. No; it is practically all freight, sir.

Mr. GRAHAM. Then you have not any working agreement of any kind?

Mr. WILLIAMS. No, sir.

Mr. GRAHAM. Never have had?

Mr. WILLIAMS. Not so far as I know, and I have been counsel for four or five years.

Mr. GRAHAM. At the time, or about the time, that this acceptance was filed by your company, was there a meeting of the stockholders at which the directors were ordered to take any action?

Mr. WILLIAMS. No, sir; the directors approved it, but there was no stockholders' meeting.

Mr. GRAHAM. How often under the rules of your company do you have a meeting?

Mr. WILLIAMS. Once a year.

Mr. DENISON. That is, a stockholders' meeting once a year?

Mr. WILLIAMS. Yes, sir; and directors' meetings from time to time.

The CHAIRMAN. Any other questions to ask of Mr. Williams?

Mr. GRAHAM. One further question. There are 15 companies here named in the report given by Commissioner Clark at a former hearing that have accepted the provisions of this act. How many of these companies, if we should adopt your language, to make the steampship companies eligible—how many of those 15 that have filed acceptances might now come in?

Mr. WILLIAMS. I do not think, sir, from what I know—and I do not want to speak inadvisedly, but I understand the Merchants & Miners' Transportation Co. and the Chesapeake Steamship Co. would be the only two.

Mr. GRAHAM. May I ask Mr. Wright. Do you know, Mr. Wright, if the language that he suggests, to cut out the carriers by water not controlled by railroad companies, leaving simply carriers by water, how many of these 15 that have already filed acceptances would be able to come in under that language, that have not already done so?

Mr. WRIGHT. That is the only change you would make, is it?

Mr. GRAHAM. Yes; as stated.

Mr. WRIGHT. The two lines. I would like to answer the chairman's last question if he desires. The Monon Railroad, running from Louisville to Chicago and Michigan City, is owned, 50 per cent by the Southern Railroad Co., and 50 per cent by the Louisville & Nashville, and has been passed by the Interstate Commerce Commission and I think a payment has been made on account of the guaranty.

Mr. DENISON. I did not understand what you said.

Mr. WRIGHT. The Monon Railroad, running from Louisville to Chicago and Michigan City, is owned, 50 per cent by the Southern, and 50 per cent by the Louisville & Nashville, and I understand that it has been passed as eligible by the commission and a payment has been made on account of the guaranty.

Mr. WEBSTER. Because the Louisville & Nashville claimed the benefit of the act?

Mr. WRIGHT. No; I think the Monon acted for itself, like the Chesapeake Line did.

Mr. SWEET. Did the commission differentiate in any way between those two propositions? I understand that it was connected with the Southern Railroad; did the commission differentiate?

Mr. WRIGHT. It seems to have done that; yes, sir. The Southern only owned one-half of the Monon.

Mr. SWEET. What is the ground of the differentiation?

Mr. WRIGHT. I could not tell you. I wanted to suggest, if the chairman would permit, that a letter could be drafted—a very short letter—to the commission which would develop its position with respect to all corporations—water carrier corporations—in which the Southern Railway is interested. I believe it would develop the fact that there had been only one exception made because of Southern Railway interests. I am not absolutely sure of that. But that would be one way to get it properly into this record.

The CHAIRMAN. Is there any doubt at all about the carrier——

Mr. WRIGHT (interposing). There is no doubt about the railroads.

The CHAIRMAN. They have all been cared for, and the rule seems to be that they are cared for in the act?

Mr. WRIGHT. That is my thought. I would like to check that up.

The CHAIRMAN. There is no suggestion in the act about anybody's ownership in one road or another?

Mr. WRIGHT. Not that I can find.

The CHAIRMAN. So that the contingency spoken of could not arise under the act?

Mr. WRIGHT. Their position is beyond my understanding.

Mr. WILLIAMS. Mr. Chairman, it could arise under the language in either case if it could arise at all. It would not make any difference under the act whether it was a carrier by water or by rail under the act, so far as whether it was a part of the system of transportation of any other company concerned, because you would look to the same language.

Mr. MERRITT. But under the act you have got to come in as a common carrier if you come in at all?

Mr. WILLIAMS. That is our contention.

Mr. DENISON. I want to ask Mr. Wright about that. The theory of the statute was to operate the system as a system, but it is a matter of fact that the Interstate Commerce Commission did not follow that, because the Southern system did not elect to take the guaranty, but the commission has allowed the guaranty to some of its subsidiaries who did elect; is that true?

Mr. WRIGHT. I understand that to be the case. The words "Southern Railway" seem no different to me than the words "Southern system"; that is really only a trade or advertising name; it has no legal significance whatever.

The CHAIRMAN. Have you any other witnesses who would like to be heard?

Mr. WILLIAMS. Mr. Compton would like to be heard briefly.

The CHAIRMAN. We will hear him.

STATEMENT OF MR. KEY COMPTON, PRESIDENT CHESAPEAKE STEAMSHIP CO., BALTIMORE, MD.

Mr. COMPTON. Mr. Chairman and gentlemen of the committee, I just want to clear up a few matters and show the correspondence had by the Chesapeake Steamship Co. with the Interstate Commerce Commission. Through the testimony of Chairman Clark this morning, when he made reference to the ownership of two-thirds of the stock of the Chesapeake Steamship Co. by the Southern Railway and the ownership of one-third of the stock of the steamship company by the Atlantic Coast Line, is the first time that I have heard officially from the commission, or any member of the commission that question as to being the reason why the commission turned down our claim. We presumed that we were under the railroad administration act, having been taken over by the President's proclamation and having remained under Federal control until Federal control ceased. When Federal control ceased, we proceeded on the theory that we were absolutely under the commission, being an independently operated corporation, and filed all the necessary papers with the commission in the form prescribed by the commission, and then I had some correspondence with the commission as to when we might expect to receive the money that we felt the Government owed us, and it was rather like a clap of thunder out of a clear sky when I received from the commission, under date of March 12, 1921, the following letter:

INTERSTATE COMMERCE COMMISSION,
BUREAU OF FINANCE,
Washington, March 12, 1921.

Mr. KEY COMPTON,
President Chesapeake Steamship Co.

DEAR SIR: Your letter of March 5, with accompanying statement giving further information in regard to the status and operation of the Chesapeake Steamship Co. in connection with its controlling rail lines, has been considered by the commission, together with previous communications upon the same subject; and the conclusion has been reached that the Chesapeake Steamship Co. is not subject to section 209 of the transportation act, 1920, and that the commission may not lawfully certify payments to that company under the said section.

Very truly, yours,

W. A. COLSTON, *Director.*

Now, that was the first information, as the president of the company, that I had had from the commission that we were not under the railroad administration act. And the commission does not give, in that letter, any explanation as to why they declined our claim of eighty-seven thousand and a few hundred dollars.

The CHAIRMAN. Never have given you any reason?

Mr. COMPTON. Never have given us any reason, except that; never have told me at any time their declination of our claim was based on the fact that our stock control was two-thirds by the Southern Railway, and one-third by the Atlantic Coast Line.

Now, I could not, in the English language, be more emphatic than to say what has already been said here by Mr. Wright and Mr. Williams and others, that the management of the Chesapeake Steamship Co., although the stock ownership is two-thirds in the Southern Railway, and one-third in the Atlantic Coast Line Railway, is operated absolutely independently of its owners. Its policies are not dic-

tated by its owners at any time. Our connections and our dealings with our connections are not in any way influenced or controlled by the Southern Railway or the Atlantic Coast Line.

Mr. WEBSTER. May I interrupt there with a question: You say until you received this letter from the commission you had no thought that you were not included under the act. Did you read the act at that time?

Mr. COMPTON. I had read the act; yes, sir.

Mr. WEBSTER. If your contention is sound and this company is to be regarded as a separate, distinct entity, it is wholly a carrier by water, is it not?

Mr. COMPTON. Yes, sir.

Mr. WEBSTER. The language of the act says that a carrier, as defined in this act, shall mean one which is a carrier by railroad, or partly by railroad and partly by water. If you disassociate yourself from these two railroads you do not come within the language of the act, do you?

Mr. COMPTON. Well, Judge, technically that may be true, but when the Panama Canal act was passed by Congress, they dealt with the question of control of water lines by stock ownership by railroads, and the question of the Chesapeake Steamship Co., and the Baltimore Steam Packet Co., and the Ocean Steamship Co., and other companies similarly owned were before the commission. If you recall the Panama Canal Act, you remember that it provided that unless these companies were operated, in the opinion of the commission, for the benefit of the public, the railroads must sell their ownership. It was left discretionary with the commission to decide as to whether these companies were or were not operated for public benefit. Every community with which we did business came over here before the commission and testified, willingly, and without any influence on our part, that the company was so operated. The commission, therefore, ruled that the onwership could continue, because it was for the public's benefit; but at the same time provided that we should be governed by the Interstate Commerce Commission's rules and regulations, and we are to-day so governed, in all of our business. All of our rates from port to port, and with all of our rail connections are governed by the Interstate Commerce Commission absolutely. Every pound of business we handle; everything we do, both freight and passenger, is governed by the Interstate Commerce Commission.

The CHAIRMAN. Are there any other questions to be asked?

Mr. COMPTON. I would like to read into the record a copy of the entire correspondence had between the Interstate Commerce Commission and the Chesapeake Steamship Co.

The CHAIRMAN. Without objection, it may go in.

Mr. COMPTON. (Reading:)

INTERSTATE COMMERCE COMMISSION,
BUREAU OF FINANCE,
Washington, February 28, 1921.

Mr. KEY COMPTON,
President Chesapeake Steamship Co., Baltimore, Md.

DEAR SIR: In reply to your inquiry of February 23 as to the present status of the claim of the Chesapeake Steamship Co. under section 209 of the transportation act, 1920, I would advise that the legal questions involved in this claim have been considered by the commission, and before a definite ruling is made

it is desired to know what relationship there is between the operations of the boat line directed by the rail line in any respect other than that of the indirect control which may be exercised through ownership of capital stock. What proportion of the traffic carried by the Chesapeake Steamship Co. is received from or delivered to the controlling rail carriers? Please give any additional facts bearing upon the relationship of operations between the boat line and the rail lines.

Very truly, yours,

W. A. COLSTON, *Director.*

MARCH 5, 1921.

Mr. W. A. COLSTON,
Director Bureau of Finance,
Interstate Commerce Commission, Washington, D. C.

DEAR SIR: Yours of February 28 received, having relation to our account for the guaranty period under section 209 of the transportation act, 1920, and asking certain questions concerning the matter. Giving you the information desired, permit me to say:

First. The operations of the Chesapeake Steamship Co. are in no manner directed or controlled by the owning carriers. The owning carriers are the Southern Railway Co., which owns two-thirds of the capital stock, and the Atlantic Coast Line Railroad Co., which owns one-third thereof. The carriers owning such stock have never and do not now in any manner control or direct, or attempt to control or direct, the operations of the said steamship company.

Second. The traffic of the steamship company is received from and delivered to the sources substantially as shown on the attached statement. The owning carriers are in just the exact position relative to such traffic as the other carriers and the public; they gain no advantage, nor have they any preference in any respect.

Third. The Chesapeake Steamship Co. was taken under Federal control on January 1, 1918, and continued thereunder until March 1, 1920, and is a carrier within the terms of section 209 of the transportation act, and did under the provisions of such act file its written acceptance of such act and the guaranty thereunder.

I will be glad to furnish you with any further or additional information that you may desire shedding light on this matter.

Yours, very truly,

KEY COMPTON, *President.*

CHESAPEAKE STEAMSHIP CO.

Statement of tonnage and percentages, by connections, for the year 1919.

BETWEEN BALTIMORE, MD., AND OLD POINT AND NORFOLK, VA.

Connections.	Northbound.		Southbound.		Total.	
	Tonnage.	Per cent.	Tonnage.	Per cent.	Tonnage.	Per cent.
Southern Ry	19,585	37.9	30,681	29.4	50,286	32.2
Atlantic Coast Line R. R.[1]	18,027	34.9	30,758	29.5	48,785	31.2
Norfolk Southern R. R.[2]	201	.5	14,492	13.8	14,693	9.5
Virginia Ry	165	.3	1,312	1.2	1,477	.9
Chesapeake & Ohio R. R	6	.....	258	.3	264	.2
Norfolk & Western Ry.[3]	.....	.....	.....	.....	.....	.....
Old Dominion S. S. Co	1,103	2.1	1,241	1.1	2,344	1.6
Norfolk local	10,663	20.7	20,473	19.6	31,136	19.9
Old Point local	1,852	3.6	5,268	5.1	7,120	4.5
Total	51,602	100.0	134,483	100.0	156,085	100.0

[1] In 1917 tonnage of Atlantic Coast Line Railroad was divided between Baltimore Steam Packet Co. and Chesapeake Steamship Co., but under Federal control all tonnage was handled by Chesapeake Steamship Co.

[2] In 1917 tonnage of Norfolk Southern Railroad was divided between Baltimore Steam Packet Co. and Chesapeake Steamship Co., but under Federal control southbound tonnage was handled by Chesapeake Steamship Co. and northbound tonnage by Baltimore Steam Packet Co.

[3] In 1917 tonnage of Norfolk & Western Railway was divided between Baltimore Steam Packet Co. and Chesapeake Steamship Co., but under Federal control all traffic was handled by Baltimore Steam Packet Co.

CHESAPEAKE STEAMSHIP CO.—Continued.

Statement of tonnage and percentages, by connections, for the year 1919—Con.

BETWEEN BALTIMORE, MD., AND WEST POINT, VA.

Connections.	Northbound.		Southbound.		Total.	
	Tonnage.	Per cent.	Tonnage.	Per cent.	Tonnage.	Per cent.
Southern Ry.	23,808	68.9	22,897	59.8	46,705	64.2
Chesapeake & Ohio R. R.	361	1.0	4,851	12.9	5,212	7.2
Virginia S. S. Co.	735	2.1	1,843	4.7	2,578	3.5
West Point (local)	3,596	10.4	1,842	4.8	5,438	7.4
River landings (local)	6,085	17.6	6,832	17.8	12,917	17.7
Total	34,585	100.0	38,265	100.0	72,850	100.0

TONNAGE DELIVERED TO AND RECEIVED FROM CONNECTIONS AT BALTIMORE, MD., WHICH TONNAGE IS INCLUDED IN TONNAGE OF CONNECTIONS THROUGH NORFOLK AND WEST POINT AND WHICH WE ARE UNABLE TO SEPARATE, BUT WHICH MOVES ON THROUGH RATES TO OR FROM POINTS ON LINES OF CONNECTIONS THROUGH NORFOLK AND WEST POINT.

Baltimore & Ohio R. R.	4,846	.....	3,129	.....	7,975	.....
Pennsylvania R. R.	14,988	.....	976	.....	15,964	.....
Western Maryland Ry.	99	.....	315	.....	414	.....
Total	19,933	.....	4,420	.....	24,353	.....

Statement of tonnage and percentages by connections for the year 1917.

BETWEEN BALTIMORE, MD., AND OLD POINT AND NORFOLK, VA.

Connections.	Northbound.		Southbound.		Total.	
	Tonnage.	Per cent.	Tonnage.	Per cent.	Tonnage.	Per cent.
Southern Ry.	26,690	37.6	41,942	39.4	68,632	38.7
Atlantic Coast Line R. R.	12,307	17.4	19,913	18.8	32,220	18.2
Norfolk Southern R. R.	3,897	5.4	7,821	7.3	11,718	6.6
Virginian Ry.	80	.1	1,087	1	1,167	.7
Chesapeake & Ohio R. R.	22	.....	260	.2	282	.....
Norfolk & Western R. R.	889	1.3	5,604	5.2	6,493	3.7
Old Dominion S. S. Co.	1,580	2.2	1,302	1.2	2,882	1.6
Norfolk local	21,454	30.3	22,808	21.5	44,262	24.9
Old Point local	4,004	5.7	5,688	5.4	9,692	5.6
Total	70,923	100	106,425	100	177,348	100

BETWEEN BALTIMORE, MD., AND WEST POINT, VA.

Southern Ry.	25,397	52.3	28,415	49.6	53,812	50.9
Chesapeapeake & Ohio R. R.	4,300	9.0	18,440	32.2	22,740	21.5
Virginia S. S. Co.	2,739	5.5	2,337	4.2	5,076	4.8
West Point (local)	2,213	4.7	2,010	3.6	4,223	4.0
River landings (local)	13,851	28.5	6,004	10.4	19,835	18.8
Total	48,510	100	57,205	100	105,716	100

TONNAGE DELIVERED TO AND RECEIVED FROM CONNECTIONS AT BALTIMORE, MD., WHICH TONNAGE INCLUDED IN TONNAGE OF CONNECTIONS THROUGH NORFOLK AND WEST POINT AND WHICH WE ARE UNABLE TO SEPARATE, BUT WHICH MOVES ON THROUGH RATES TO OR FROM POINTS ON LINES OF CONNECTIONS THROUGH NORFOLK AND WEST POINT.

Baltimore & Ohio R. R.	17,220	.....	5,833	.....	23,053	.....
Pennsylvania R. R.	15,447	.....	2,617	.....	18,164	.....
Western Maryland Ry.	826	.....	2,275	.....	3,101	.....
Total	33,493	.....	10,728	.....	44,321	.....

CHESAPEAKE STEAMSHIP CO.,
Baltimore, Md., March 1, 1921.

INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

GENTLEMEN: On the 31st day of December, 1920, the Chesapeake Steamship Co. duly filed seven copies of its answer to order of this commission dated October 18, 1920, and supplement thereto of January 5, 1921, in the matter of settlement with carriers under the provisions of section 209 of the transportation act, 1920.

Chesapeake Steamship Co. now respectfully makes application for a certificate from this commission for the whole or a part of such account so filed as this commission can now issue and as is consistent with the terms of the transportation act, 1920, as amended by act approved February 26, 1921.

By the account or answer so filed the Chesapeake Steamship Co. claims that there is owing to it under the terms of said acts the sum of $87,778.02, as is particularly set forth therein, and reference is made to such answer or account.

Chesapeake Steamship Co. is in need of such payments for the following specified purposes:

First. It has an accumulation of unpaid obligations which should have been paid many months ago, and would have been paid if it could have procured the funds so to do, totaling more than $75,000, some of such obligations being many months overdue.

Second. It is necessary to make certain repairs to the boats or steamers now in the service of the Steampship Co. to conform with the rules and regulations of the United States Steamship Inspection Department, and to otherwise repair such steamers and boats in order to enable them to perform their public functions.

Third. When the steamships belonging to this company were returned to it on March 1, 1920, there were certain necessary repairs that should have been done and that would have been done except for the lack of funds, and some of such repairs are immediately needed at this time.

The Steamship Co. asks that this application under the acts above mentioned be considered at as speedy day as possible.

Sincerely, yours,

KEY COMPTON, *President.*

INTERSTATE COMMERCE COMMISSION,
BUREAU OF FINANCE,
Washington, March 12, 1921.

Mr. KEY COMPTON,
President Chesapeake Steamship Co.

DEAR SIR: Your letter of March 5, with accompanying statement giving further information in regard to the status and operation of the Chesapeake Steamship Co. in connection with its controlling rail lines, has been considered by the commission, together with previous communications upon the same subject; and the conclusion has been reached that the Chesapeake Steamship Co. is not subject to section 209 of the transportation act, 1920, and that the commission may not lawfully certify payments to that company under the said section.

Very truly, yours,

W. A. COLSTON, *Director.*

CHESAPEAKE STEAMSHIP CO.,
Baltimore, July 15, 1921.

Hon. SAMUEL E. WINSLOW,
Chairman House Committee on Interstate and Foreign Commerce,
United States House of Representatives, Washington, D. C.

DEAR SIR: I would like to supplement my testimony on Monday night, July 11, in the matter of House bill 7100, with the following statement:

The Cheseapeake Steamship Co. was in exactly the same position as the railroads as regards the proclamation issued by the President on December 26, 1917, which proclamation became effective January 1, 1918.

The Chesapeake Steamship Co., like the railroads, continued under its corporate management, but subject to the orders of the Director General of Railroads, just as the railroads were. You will recall that Federal managers for the railroads were not named by the director general until three or four months after the proclamation became effective; in other words, the railroads continued, as the Chesapeake Steamship Co. did, under their corporate management subject to the rules and regulations promulgated by the director general.

On July 20, 1918, I was sent for by the regional director of the Allegheny region and instructed to take charge of the Chesapeake Steamship Co. and the Baltimore Steam Packet Co. as Federal manager, which I did. All revenues from January 1, 1918, up to that time were accounted for to me as Federal manager and turned over to me as Federal manager, and in their proper form credited to the Railroad Administration.

Our accounting was separate from that of the Southern Railway and the Atlantic Coast Line. There were, of course, separate Federal managers for the Southern Railway and Atlantic Coast Line, and the Federal managers of the Southern Railway and Atlantic Coast Line reported to the regional director of the southern region, with headquarters at Atlanta, Ga., while I reported to the regional director of the Allegheny region, with headquarters at Philadelphia, Pa., as Federal manager of the Chesapeake Steamship Co. and the Baltimore Steam Packet Co. You will therefore see from this statement that the Federal managers of the Southern Railway and the Atlantic Coast Line had no jurisdiction whatever over these companies ,even under Federal control, and the two steamer lines of which I was Federal manager were treated absolutely as separate units.

While I was Federal manager of the Chesapeake Steamship Co. and the Baltimore Steam Packet Co. all my orders were received from either the regional director of the Allegheny region at Philadelphia, or from the director general, and none came to me through the Southern Railway or the Atlantic Coast Line, or their Federal managers.

Yours, very truly,

KEY COMPTON, *President.*

The CHAIRMAN. Does the committee desire to have any further evidence? If not, we will consider the hearings closed.

(And thereupon, at 11 o'clock and 20 minutes p. m., the committee adjourned, to meet on Tuesday, July 12, 1921, at 10 o'clock a. m.)

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